

5th October, 2012

LEGAL NOTICE NO. 112

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999
(No. 8 of 1999)

IN EXERCISE of the powers conferred by section 147 of the Environmental Management and Co-ordination Act, 1999, the Minister for Environment and Mineral Resources, makes the following Regulations:—

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (PUBLIC COMPLAINTS COMMITTEE) REGULATIONS, 2012

PART 1—PRELIMINARY

Citation.

1. These Regulations may be cited as the Environmental Management and Co-ordination (Public Complaints Committee) Regulations, 2012.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Committee" means the Public Complaints Committee established under section 31 of the Act;

"complaint" means an oral or written communication made or addressed to the Committee relating to any matter set out under Section 32 of the Act;

"investigation panel" means the unit of the Committee set up for the purpose of investigating complaints, allegations or matters relating to the condition of the environment or environmental degradation;

"Tribunal" means the National Environmental Tribunal established under section 125 of the Act.

PART II—COMPLAINTS

Lodging of complaints.

3. (1) A complaint may be lodged at the offices of the Committee or at such other place as the Committee may determine.

(2) A complaint may be lodged by the complainant in person or by another person authorized to act for the complainant

Mode of a complaint.

4. (1) A complaint may be made either orally or in writing.

(2) A complaint made orally or in a manner other than that set out in Form 1 in the Schedule shall be reduced into writing as soon as practicable, and in any event not later than forty-eight hours from the date of the complaint.

(3) A person who reduces a complaint into writing under paragraph (2) shall—

- (a) read over and explain the contents of the complaint to the complainant;
- (b) note on the form that the complainant has understood the contents;
- (c) state his name and designation; and
- (d) cause the complainant or the duly authorized agent to sign or affix a thumbprint at the bottom of each page of the document where practicable.

(4) A written complaint shall be in Form 1 in the Schedule and shall include—

- (a) the name, address, telephone contact of the complainant;
- (b) a concise statement of the nature of the violation of the environment; and
- (c) the date and place and occurrence of the violation of the environment.

(5) A complainant shall, upon completing Form 1 set out in the Schedule attach any document in support of the complaint.

(6) The Committee shall upon receipt of the complaint provide the complainant

or his agent with a copy of the complaint Form under Paragraph 5 and a formal acknowledgement of the receipt of the complaint in Form 2 set out in the Schedule.

(7) No provision of this regulation shall bar the Committee from entertaining any complaint from any aggrieved party.

Fees.

5. (1) No fee shall be charged on the lodging or determination of a complaint.

(2) Notwithstanding the provisions of paragraph (1), a nominal fee may be prescribed where copies of the proceedings or documents of the committee have been applied for by a party.

(3) The Committee may waive any fee chargeable under this regulation upon satisfaction that a person is unable to pay the fee.

Service of documents.

6. (1) Any document required to be served under these Regulations shall, where practicable, be served personally on the person by delivering or tendering the document to the person or, if it cannot be so served, shall be served by sending the document to the person's proper address by registered post or by other verifiable form of posting.

(2) Every document issued under these Regulations and requiring service shall be served under the authority of the Committee by an authorized person, a chief or a police officer.

(3) Any document required to be served on an incorporated body shall be deemed to be duly served if served upon an authorized officer of the incorporated body.

(4) Where a person on whom a document is required to be served cannot be found, service may be made by—

(a) publishing the particulars of the document in a newspaper with the circulation in the area where the person resides;

(b) leaving the duplicate of the document with any adult member residing with the person; or

(c) affixing the duplicate of the document to some conspicuous place in the premises in which the person ordinarily resides and also to a conspicuous place at the offices of the Committee.

(5) No objection may be made on the service of a document on the grounds that the person who served the document exceeded or failed to comply with the authority.

(6) The Secretary shall, in respect of any special investigation, serve all affected persons with a concise statement of the matters forming the subject of an intended investigation.

Language.

7. Proceedings before the Committee shall be conducted in English or Kiswahili.

Withdrawal of complaint and lapse of time.

8. (1) A complainant may, in writing, withdraw a complaint at any stage of the proceedings and before any finding or recommendation is made, but such withdrawal shall not automatically terminate the investigation.

(2) The Committee may, in its discretion, continue with the investigation of any complaint, if, on the basis of evidence before it, such investigation is in the public interest.

(3) Where a Complainant fails or neglects to respond to communication from the Committee within twelve months from the date of such communication, the Committee may deem the complaint to have lapsed save that the Committee may on its own motion, commence the investigation of the complaint as if the same was a complaint requiring special investigation.

Register of complaints.

9. (1) The Committee shall keep a register of complaints in which all the complaints shall be entered.

(2) A complaint shall be numbered and recorded sequentially in the register of complaints in the order it was received.

(3) Subject to the provisions of regulation 16 of these Regulations the Committee, may publish or otherwise disclose to any person any information held on the register if it is of the opinion that the publication or disclosure is necessary for or conducive to the purpose of—

- (a) raising public awareness of the complaints system; or
- (b) improving the complaints system.

Rejection of complaints.

10. (1) The Committee may within two months from the date of lodging of a complaint reject it and the Committee shall record its reasons for rejecting that complaint.

(2) A complainant shall be informed of the rejection of a complaint within thirty days from the date of its rejection.

(3) Subject to paragraph (1) the Committee shall reject a complaint where it considers that—

- (a) the matter is the subject of a complaint pending under investigation;
- (b) the complaint is vexatious, frivolous, oppressive or otherwise an abuse of the procedures for dealing with complaints; or
- (c) the complaint is repetitive.

(4) For the purposes of paragraph (3), a complaint is repetitive if it is substantially the same as a previous complaint, whether made by or on behalf of the same or a different complainant, or it concerns the same subject as a previous complaint;

(5) Nothing in this regulation shall prevent the Committee from investigating a complaint if it considers that it is in the public interest to do so.

Processing of complaints.

11. (1) Every complaint registered under these Regulations shall be forwarded to the Committee for assessment.

(2) The Committee shall assess the complaint and may—

- (a) admit the complaint and recommend investigations;
- (b) advise the complainant that the matter is not within the statutory mandate of the Committee; or
- (c) give such other advice as shall be necessary in the circumstances of the case.

Rejection of Complaint.

12. (1) Where the Committee assesses a complaint, it shall form an opinion on whether—

- (a) the contents of the complaint are within the statutory jurisdiction of the Committee;
- (b) justifiable; or
- (c) otherwise merits admission.

(2) Where, in the opinion of the Committee a complaint does not fall within the statutory jurisdiction of the Committee, is unjustifiable or otherwise does not merit admission, such complaint shall be rejected.

(3) The Committee shall record its reasons for rejecting a complaint and shall send a copy of its opinion and recommendation to the complainant within thirty days.

Application for review.

13. (1) Any person who is aggrieved by a decision to reject a complaint may make an application for review of that decision.

(2) An application for review shall only be made upon the discovery of new and important matter or evidence which was not within the knowledge of the applicant when the decision was made or for any other sufficient reason.

(3) An application for review shall be in writing and shall state -

- (a) the details of the complaint;
- (b) the date on which the complaint was made;
- (c) the ground on which the application is based; and
- (d) the date on which the complainant was notified of the rejection of the Complaint.

(4) The Committee shall consider the application and allow or disallow it.

(5) The Committee shall determine the outcome of an application for review as soon as practicable and shall notify the appellant of the reason for its determination.

(6) Where the Committee receives an application for review it may request any information from any person which it considers necessary to dispose of the application.

(7) Where an application for review is disallowed, the complaint shall be closed and the applicant shall be notified accordingly.

PART III—INVESTIGATIONS

Preliminary investigations and notification.

14. (1) The Committee shall, initiate in the first instance, preliminary investigation into all the complaints it admits.

(2) A person against whom a complaint is made shall be served with a copy of the complaint and shall, within twenty one days from the date of receipt of the complaint, submit comments to the Committee.

Information.

15. (1) The Committee may receive or obtain information from such persons as it may deem proper, including, information from such persons as the Committee considers to possess knowledge or experience in matters relating to any complaint before it.

(2) Where a complaint is not disposed of after the preliminary investigation, the Committee shall review the Complaint with a view to initiating further investigations.

(3) Subject to the provisions of these regulations, the Committee may regulate its procedure in such manner as it deems fit.

Confidentiality.

16. The Committee shall not disclose or publish information received by it in confidence without the prior consent of the informant.

Further investigations.

17. (1) The Committee may undertake further investigation on a complaint through site visits, hearings and summoning of witnesses.

(2) Hearing notices shall be in Form 3 in the Schedule.

(3) Witness summons shall be in Form 4 in the Schedule.

(4) During the site visit, or so soon as may be practicable thereafter, the Committee shall issue the parties with an interim site visit report.

(5) During the interim site visit, the Committee may in writing, require any party to the complaint or any other person in whose custody certain relevant information which is in the consideration of the Committee, necessary for the proper determination of the dispute, to furnish the Committee with such documentary or other evidence of any facts within such a period as will be stated in the interim site visit report.

(6) A requisition for evidence under subparagraph 5 shall be in Form 5 in the Schedule.

(7) Upon completion of further investigations the Committee may—

(a) refer the complaint to the investigation panel;

(b) make such other recommendations as shall be necessary.

The Investigation Committee.

18. (1) The Chairman shall preside at every meeting of the Committee at which the chairman is present, and, in the absence of the Chairman at any meeting the Committee members present shall elect one of their numbers who shall, with respect to that meeting and the business transacted in that meeting have all the powers of the Chairman.

(2) A meeting held under paragraph (1) shall, have powers to constitute an investigation panel.

The Investigation panel and quorum.

19. (1) An investigation panel shall only investigate complaints referred to it by the Public Complaints

Committee.

(2) An investigation panel shall consist of—

(a) a presiding Chairman and such number of Committee members appointed by the Chairman; or

(b) a person qualified in law who shall act as the secretary;

(c) such other persons as may be appointed by the Committee.

(3) Any act or thing done by the investigation panel shall be deemed to have been done by the Committee.

Disclosure of interest.

20. (1) If a member of the Committee or investigation panel is directly or indirectly interested in any matter before the Committee and is present at a meeting of the Committee at which a matter is the subject of investigation, the member shall, at the meeting and as soon as reasonably practicable after the commencement of the meeting, disclose that fact and shall not take part in the consideration or discussion or, or vote on, any questions in respect of the matter, or be counted in the quorum of the meeting considering the matter.

(2) A person shall be deemed to be directly or indirectly interested in a matter before the Committee if—

(a) the person has any social, financial or other connection with the person being investigated which could, on an objective appraisal of all material facts, give rise to a legitimate fear as to whether that investigation can be carried out impartially;

(b) the person works or has in the past worked, directly or indirectly, under the management of the person being investigated.

(3) A disclosure of interest made under this request shall be recorded in minutes of the meeting at which it is made.

Consolidation and splitting of investigations.

21. (1) The Committee, in the carrying out of any investigation under these regulations may—

(a) consolidate that investigation with another such investigation; or

(b) split that investigations in remove space to two or more such separate investigations if it considers that it is efficient and effective; or is otherwise in the public interest, to do so.

(2) Nothing in this regulation shall prevent the Committee from determining that—

(a) where an investigation is split into two or more separate investigations the investigations may take different forms;

(b) two or more separate investigations which take different form may be combined into a single investigation.

Investigation panel.

22. (1) The investigation panel shall investigate complaints referred to it by the Committee.

(2) The investigation panel shall, upon receipt of a complaint, issue a notice to the concerned parties informing them of the intended investigation.

(3) An investigation notice shall be in Form 6 in the Schedule.

Investigation Procedures.

23. (1) A person appearing before the investigation panel shall be entitled to give evidence, call witnesses and address the investigation panel on the subject matter of the complaint.

(2) Subject to these Regulations, the investigation panel shall regulate its own procedure.

(3) Evidence before the investigation panel may be given orally, or if the investigation panel so orders, by affidavit or written statement.

(4) The investigation panel may require any person who in its opinion is able to give information relating to the subject matter before it, to produce such documents or objects in the possession or under the control of that person, which in the opinion of the investigation panel are relevant to the subject matter of the investigation.

Summoning of experts.

24. (1) The investigation panel may summon before it and examine on oath any expert who in its opinion is able to give evidence relating to the subject matter of the investigation.

(2) The Committee may order payment at its own expense of reasonable expenses to an expert assisting in an investigation.

Avoidance of technicalities and formality.

25. The Committee shall conduct its business in such manner as it considers most suitable for the just execution of its business and shall, avoid legal technicality and formality in all its proceedings save where it acts in compliance with an order issued by the High Court.

Failure to obey summons.

26. If without sufficient cause, a witness does not appear in obedience to summons issued by the Committee, that person shall have committed an offence under Section 33 of the Act.

Duty to provide information and exceptions.

27. (1) The Committee shall inform the complainant, and the respondent, or any interested party, of the findings of the investigation panel.

(2) The Committee may withhold any information or report of its findings if the non-disclosure of such information or report is necessary for the purposes of—

(a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings,

(b) preventing the disclosure of information or finding in which its non-disclosure—

(i) is in the interests of public safety;

(ii) is for the purposes of further investigations; or

(iii) is otherwise in the public interest.

(3) The Committee may, on the application of a party or on its own motion, exclude the public generally or any particular person from the venue where its proceedings take place.

(4) A notification of the findings and recommendations of the Committee shall be in Form 7 in the Schedule.

Suspension of Investigation.

28. (1) The Committee may suspend any investigation or other procedure provided for under these regulations, which would, if it were to continue, prejudice any criminal proceedings.

(2) The Committee may direct that any investigation which is liable to be suspended under sub-regulation (1) shall continue if it is of the view that it is in the public interest to do so.

(3) Where an investigation has been suspended until the conclusion of any criminal proceedings, the investigation panel may resume the investigation upon the conclusion of the criminal proceedings.

(4) Where an investigation panel forms an opinion that it is necessary to suspend an investigation, such opinion shall be tabled before the Committee as soon as practicable, but a decision to suspend an investigation shall only be made by the Committee.

PART IV—SPECIAL INVESTIGATION

Special investigation.

29. (1) The Committee may on its own motion or on the basis of a complaint conduct an investigation into—

(a) any allegation or complaints against any person, or the Authority in relation to the condition of the environment in Kenya; or

(b) any suspected case of environmental pollution or degradation.

(2) In determining whether an investigation should be commenced, the Committee shall first be satisfied that the Complaint or the matter falls within the provisions of section 32 of the Act.

Procedure of Investigation.

30. The Committee may designate a sub-committee for the purposes of an investigation under regulation 29 of

these Regulations.

Reports.

31. (1) Upon the conclusion of an investigation, the sub-committee shall submit its report to the Committee.

(2) A report submitted under paragraph (1) may be adopted by the Committee and forwarded to the Council.

32. (1) The Committee shall in the last quarter of every year, appoint a technical sub- committee to draft the various reports required under these Regulations.

(2) The Secretary shall be a member of, and the convenor of the sub-committee appointed under these Regulations.

PART V —MISCELLANEOUS

Proceedings

33. A member of the Committee shall be free from any liability for anything done or said by him in his capacity as such member.

Forms.

34. Except as specifically provided in these regulations, the forms used under these regulations shall be such forms as the Committee may, from time to time design or approve with such modification as may be necessary.

Effect of Regulations.

35. (1) These Regulations shall apply, as far as practicable to allegations investigated by the Committee on its own initiative.

(2) Non compliance with any of these Regulations shall not render void any action taken by Committee.

Time.

36. The Committee may in writing extend the time or period specified for the performance of any act or thing required to be done by these regulations.

Referral to the Tribunal.

37. (1) The Committee may, in its discretion, refer any matter relating to a complaint to the Tribunal.

(2) Any matter referred to the Tribunal shall be dealt with in accordance with the provisions of Section 126(2) of the Act.

Pending Complaints.

38. These Regulations shall apply to any complaint lodged before the Committee in respect of which investigation has not commenced.

SCHEDULE

FORM I (r 4(4))

REPUBLIC OF KENYA

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999

COMPLAINT NO _____ OF 20 _____
Public Complaints Committee
COMPLAINT FORM

1. Complainant identity

Name of the complainant (person or firm).....
Address
Telephone Number.....
Fax Number.....
Name of the Respondent (person or Firm)
Address.....
Telephone Number.....
E-mail Address.....
Area polluted or degraded.....

2. Nature of the Complaint

(briefly state the facts of the matter and give concise details of the complaint in numbered paragraphs including

a statement as to whether any issues relating to the complaint are before a Court of Law);

3. Declaration by the Complainant.

I hereby certify that the particulars given above are correct and true to the best of my knowledge.

Name.....
Position
Signature.....
On behalf of.....
Date

FORM 2 {r 4(6)}

PUBLIC COMPLAINTS COMMITTEE Date:.....
P. O. Box 74772 – 00200 Nairobi
Bellevue Area, Popo Road
Tel: +254-20-609692 / 020-2405782
+254-20-2304474 / 2182791
Fax: +254-20-609692
Email: pcc.environment@gmail.com

COMPLAINT ACKNOWLEDGEMENT FORM

Complainant (s)

.....
.....

Respondent (s)

.....
.....

Nature of complaint

.....
.....

Location

.....

Action to be taken

.....
.....

Received by

Name
Signature.....
Date
For Chairman, PCC

FORM 3 {r 17(2)}

REPUBLIC OF KENYA

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999 PCC COMPLAINT
NO _____ OF 20 _____

HEARING NOTICE

TO.....
.....
.....

Whereas this Committee has admitted the above complaint made
against.....and intends to
investigate the same

NOW TAKE NOTICE that the Committee will hold a hearing of the parties in the complaint on the
.....day of.....20.....

You are hereby required TO APPEAR PERSONALLY or through your representative on the aforementioned
date at..... at.....o'clock, in the morning or afternoon, and to provide
such documentary and oral information to the Committee regarding the complaint.

ISSUED under my hand this.....day of..... 20.....

Chairman/Secretary.
The Public Complaints Committee.

FORM 4 (r 17(2))

REPUBLIC OF KENYA
THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999
COMPLAINT NO _____ OF 20 _____

Public Complaints Committee

WITNESS SUMMONS

To
of.....

Whereas this Committee is investigating the above complaint; you are therefore required to attend before the Public Complaints Committee on Environment in regard to
.....at.....on.....day of.....20.....at..... O'clock, and so from day to day until the matter is disposed of, to give evidence on behalf ofand also to bring with you and to produce at the time and place aforesaid.....
(specify the documents to be produced).....

ISSUED under my hand this.....day of..... 20.....
Your attention is particularly drawn to section 33(2) of the ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION Act, 1999 that makes it an offence for anyone to refuse to comply with the requirements of the Committee.
In the name of the Public Complaints Committee

FORM 5 {r 17(5)}

PUBLIC COMPLAINTS COMMITTEE Date:.....
P. O. Box 74772 – 00200 Nairobi
Bellevue Area, Popo Road
Tel: +254-20-609692 / 020-2405782 +254-20-2304474 / 2182791
Fax: +254-20-609692
Email: pcc.environment@gmail.com

INTERIM ON SITE INVESTIGATION REPORT

Location.....
Nature of complaint

Respondent (s)

Observations

Documents/items to be availed to PCC and name of the person to avail them.

Interim Recommendations

Signed
Date
Name.....
Chairman, PCC
Acknowledged by respondent
Signed Date.....

Note: Section 33 (1) (a) and (2) (a) of the Environmental Management and Coordination Act provides as follows:

- “The Complaints Committee may, by notice in writing, require any person to –
- 1 (a) Give to the complaints committee all reasonable assistance in connection with the investigation of any complaint.
 - 2 (a) a person who refuses to comply with the requirement of the Complaints Committee which is applicable to him, to the extent to which he is able to comply with it commits an offence.

FORM 6 (r 22(3))

REPUBLIC OF KENYA

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999
COMPLAINT NO _____ OF 20 _____

Public Complaints Committee

INVESTIGATION NOTICE

TO.....

.....

.....

Whereas this Committee has admitted the above complaint made
against.....and intends to investigate the same

NOW TAKE NOTICE that the Committee shall investigate the said complaint on theday
of.....20.....

You are hereby required to personally or through your representative TO APPEAR at the
.....on the aforementioned date ato'clock, in the forenoon, and to provide
such documentary and oral information to the Committee regarding the complaint.

ISSUED under my hand this.....day of..... 20.....

In the name of the Public Complaints Committee.

FORM 7 {r 27(4)}

PUBLIC COMPLAINTS COMMITTEE Date:.....

P. O. Box 74772 – 00200 Nairobi

Bellevue Area, Popo Road

Tel: +254-20-609692 / 020-2405782

+254-20-2304474 / 2182791

Fax: +254-20-609692

Email: pcc.environment@gmail.com

PCC: COMPLAINT No. .../.....

RESPONDENT.....

RE: FINDINGS AND RECOMMENDATIONS

Enclosed please find a report of the investigation regarding a complaint against you dated under
Section 32 of the Environmental Management and Coordination Act (EMCA) 1999.

This is a summary of the report for your ease of reference.

Kindly take the necessary action in consultation with the area NEMA District Environment Officer.

Sincerely

.....

Chairman, PCC

c. c.

1. Secretary, NEC
2. Director General, NEMA
3. Complainant

Dated the 10th September, 2012.

CHIRAU ALI MWAKWERE,
Minister for Environment and Mineral Resources