



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 545   Pretoria   11 November   2010   **No. 33746**

## **M A N U A L S**

*IN ACCORDANCE WITH*

**THE PROMOTION OF ACCESS TO**

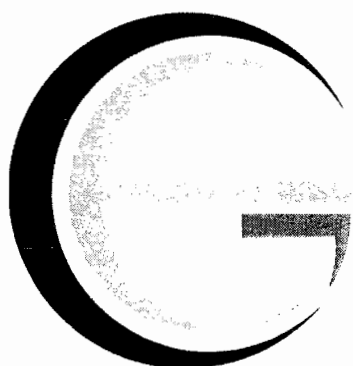
**INFORMATION ACT (NO. 2 OF 2000)**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

# **COMPLAINTS PROCEDURE MANUAL**

**COMMISSION FOR GENDER EQUALITY**



**Commission for Gender Equality**

*A Commission for the Promotion and Protection of the Rights of Women and Men*

## **GENERAL PROVISIONS**

### **1. Short title and commencement**

These regulations shall be called the Complaints Procedures Manual for the staff of the Commission on Gender Equality and shall come into operation on the 1<sup>st</sup> January 2011.

### **2. Interpretation**

This Manual shall be interpreted against the Constitution and good governance.

### **3. The Commission on Gender Equality Act No 39 of 1996 (CGE Act) does not provide for supporting regulations.**

3.1 Aspects relating to complaints handling, investigations, mediations and litigations must be gazetted in terms of Section 12(2) of the CGE Act.

3.2. To this end, procedures relating to complaints handling and other aspects relating to investigations contained herein and as such are divided into sections.

3.3. Each section comes into operation on the aforesaid date. Plenary may direct otherwise which direction shall be communicated to all in the CGE. The original signed copies of the Complaints Procedure Manual or each part as amended must be kept by both the offices of the Chairperson and the Chief Executive Officer (CEO).

**4. In Formulating this Complaints Procedure Manual the following legislation and documents were considered:**

- The Commission on Gender Equality Act No 39 of 1996
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- The SA Human Rights Commission and Youth Commission Regulations
- The Public Protector Policies

Whenever a provision in these regulations in relation to a member of staff confers a power, imposes a duty or entrusts a function to the Chief Executive officer, that provision shall, if the power, duty or function concerned is to be exercised or performed in relation to the Commission, be construed in such a way that the power, duty or function concerned shall be exercised or performed by the authorized personnel.

## **5. Scope of application**

These regulations apply to the members of the public, Complainants and all employees of the CGE.


## **6. Amendment of Complaints Procedure Manual**

Each part of the Complaints Procedure Manual may be amended separately and should be signed accordingly. Proposed amendments must be circulated and disseminated within the CGE for comment 30 days prior to adoption by the Plenary. The motion will be adopted by Plenary with a two thirds majority.

## **7. Repeal of Complaints Procedure Manual**

On its adoption at Plenary, all earlier versions of the Complaints Procedure Manual cease to apply.

**DATE: 04 November 2010**



Mfanomezwe Shoji  
Acting Chairperson – Commission for Gender Equality

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## PREAMBLE

- (i) The Constitution of the Republic of South Africa Act 108 of 1996 established the Commission for Gender Equality (CGE) and entrusted it with the powers to promote gender equality as its main function. Given the historical context in which the Constitution was adopted, and the extent of the violation of fundamental rights which had preceded it, the effectiveness of the Commission in the performance of its responsibilities is of critical importance.
- (ii) In terms of its constitutional mandate and as amplified in the Commission on Gender Equality Act 39 of 1996 (CGE Act), the investigation of complaints is one of the principal ways in which the Commission discharges its functions. In addition, the Commission is mandated to conduct research, disseminate information and develop educational programmes to foster the understanding of matters pertaining to the promotion of gender equality.
- (iii) This manual describes the administrative procedures for dealing with the complaints that are lodged with the Commission on Gender Equality. These procedures must be measured against the Constitution as a backdrop and the CGE Act. Given the range and complexity of matters that may give rise to a complaint, it is neither



possible nor desirable to lay down rigid rules to be invariably applied. Complaint handling calls for the exercise of judgment and discretion throughout the process. This manual is designed to guide this decision making and ensure that, within the available resources, matters are dealt with as efficiently and as effectively as possible. Due to the relatively short period that the Commission has been operating in, the continued development of its complaint handling practices will need to draw on the experience of staff, Commissioners and the public at large in applying these procedures and will be amended accordingly. In the event that the manual is silent on a procedure, reference will be made to the procedures of the South African Human Rights Commission and or procedures of the other Chapter nine institutions. It must be borne in mind that the intention is to manage complaints and ensure relief as expeditiously where possible.

## **Definitions**

***Head of Department*** means Head of Legal Department

***Senior Complaints*** means Deputy Direct in the Legal Department employed by

***Officer*** the CGE to oversee the handling of the complaints

<b><i>Complaints Officer</i></b>	Means the Legal Officer employed by the Commission on Gender Equality
<b><i>Commission</i></b>	Means the Commission for Gender Equality established in terms of the commission on Gender Equality Act 39 of 1996
<b><i>Constitution</i></b>	Means the Constitution of the Republic of South Africa Act 108 of 1996 as amended.
<b><i>Chairperson</i></b>	Means the Chairperson of the Commission on Gender Equality
<b><i>Commissioners</i></b>	Means the Commissioners appointed by the President of the Republic to serve as the Commissioners for the Commission on Gender Equality
<b><i>Complaint</i></b>	Means allegation of gender discrimination; violation of gender rights or any case which is gender related, reported to the Commission on Gender Equality or where the Commission on Gender Equality initiated the investigation of its own accord.
<b><i>Complainant</i></b>	Any person, juristic person or group of people who lodged complaint with the Commission on Gender Equality
<b><i>Days</i></b>	Any day or number of days mentioned in this manual is referred to working days.
<b><i>PEPUDA</i></b>	Promotion of Equality and Prevention of Unfair Discrimination Act of 2000
<b><i>CGE Act</i></b>	Commission on Gender Equality Act 39 of 1996

**PART 1**

- **The South African Constitution**

- (i) The Commission is established in terms of Chapter 9 of the Constitution as one of the State Institutions supporting democracy. Section 181 of the Constitution provides that these institutions are independent and subject only to the Constitution, must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice. It also states that other organs of State through legislative and other measures must assist and protect these institutions to ensure the independence, impartiality, objectivity, dignity and effectiveness of these institutions. It further states that no person or organ of State may interfere with the functioning of these institutions. The powers of the Commission include the power to investigate and to report on the observance of gender equality, and protect that to secure appropriate redress where gender rights have been violated.
- (ii) Chapter 2 of the Constitution, sets out in the Bill of Rights in Sections 9 (3) to (5) describes each of the rights that are protected, subject only to the limitations contained in Section 36 or elsewhere in the Act.

- **The Commission on Gender Equality Act 39 of 1996**

- (i) The CGE Act states that its staff shall serve impartially and independently. In addition to the powers, duties and functions set out in Section 187 of the Constitution, the act provides that the Commission shall maintain close liaison with constitutional bodies or authorities similar to the Commission in order to foster common policies and practices and to provide co-operation in relation to the handling of complaints in cases of overlapping jurisdiction.
- (ii) Further to the powers of investigation, the Commission has power to enter and search premises, attach and remove articles as well as subpoena persons to either provide information to the Commission or provide documents or articles relevant to the investigation.
- (iii) The Act is silent on the Commission's power to bring proceedings in the competent Court or Tribunal under its name, or on behalf of a person or a group or class of persons. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA) provides that the Commission may take matters to a competent Court or Tribunal under its name or on behalf of a person or a group or class of persons. As this manual is primarily concerned with the Commission's internal complaints handling process, it does not deal with the litigation as the relevant Rules of Court will apply.

## **PART 2**

### **1. Interpretation of this manual**

- (i) The Head of Department (HoD) for Legal Services is responsible for the formulation of policy in relation to the handling of complaints. Any ambiguity is to be referred to the HoD. The decision of the HoD may be reviewed by the Plenary.
- (ii) The Commission is committed to the provision of the high quality service in dealing with complaints and ensuring that as far as possible, its processes are accessible, simple and provided in a timely manner. In addition, the development of this manual reflects the Commission's commitment to a procedurally fair and transparent complaints handling process.
- (iii) Implementation of these procedures will also enable the Commission to report comprehensively on the outcome of all complaints, which it receives, and to provide Parliament with detailed and timely reports on findings in matters of particular seriousness.

- (iv) Complaints wherein doubt prevails must be referred to the Senior Complaint Officer or HoD.
- (v) Matters requiring urgent attention must be directed or referred to the Senior Complaints Officer, the HoD or authorised personnel as soon as possible
- (vi) Authorised personnel shall mean the employee of the CGE in the Legal Department who is either admitted attorneys/advocate.

## **2. Confidentiality**

- (i) The issue of confidentiality is left to the discretion of the Commission as dealt with by Section 12(2) of the CGE Act which states as follows:-

*"a) If it is in the interests of justice or to any person who might otherwise ensue,*

*b) The Commission or a member thereof may direct that any person or category of persons shall not be present at the proceedings during the investigation or any party thereof;*

c) *No person shall disclose to any other person the contents of any document in the possession of the member or member of the staff of the Commission or the record of evidence given before the Commission during an investigation, unless the Commission determines otherwise."*

(ii) Having regard to the aforementioned, the following must be considered,

a. If it is in the interests of the public and in the interest of justice and if no harm comes to any person, hearings of the Commission should be open to the public;

b. If complaints accepted and investigated by the Commission are generally and not the subject of a public hearing.

(iii) Nevertheless, the possibility that a complaint may be referred to the Commission for a public hearing, or that the findings of an investigation may be publicised, or otherwise made known to people not directly implicated in the complaint, means that the confidentiality of parties to a complaint cannot automatically be guaranteed.

(iv) This also applies to the information sought by, and provided to the Commission for the purposes of its investigation of a complaint. Any

attempt by a party or a witness to limit the Commission's research material gathered during the course of the investigation by claiming it is "confidential" should be politely and friendly rejected. Thus, legal officers must take care to ensure that in the dealings with complainants and respondents they do not inadvertently bind the Commission in this regard, for example by agreeing to treat a particular document or statement as "confidential". It must be reiterated that it is in the discretion of the Commission to decide whether a document or information can be treated as confidential or not, taking into account the interests of justice or if any person may suffer harm as a result of disclosure. Any concern in this regard must be referred to the HoD or the Senior Complaints Officer.

- (v) It must be noted, that privacy during the investigation process enables such a process to proceed speedily and tends to maximise the opportunities to ultimately resolve the matter by conciliation, negotiation or mediation. Thus it will build a more efficient and effective way of dealing with these complaints. Where a complaint is dealt with in this manner, the Commission may choose to publish the outcome, in the interest of promoting respect for human rights and educating the public about particular issues. It may choose to do so, however, in a way that ensures the continuing privacy of the parties concerned especially if disclosure of the identity is not necessary to the achievement of the broader educative objective.



- (vi) The Commission may not at any stage publicise the names and the details of the complainant without obtaining a written consent, in case where publicising of the complaints is in the interest of justice false names and details shall be used.

### **3 Jurisdiction**

- (i) Commission shall not have jurisdiction to handle any complaint that occurred before 27 April 1994.
- (ii) The Commission shall not handle any of the following matters, civil claims, criminal matters, family law disputes etc.
- (iii) Complaints which fall outside the Commission's jurisdiction are to be referred. (see below for information on referrals). Standard letters of referrals are to be decided by or on behalf of the HoD. Once this letter is dispatched, the file shall be closed if there is no need for further monitoring.
- (iv) Anonymous complaints may not be investigated by the Commission.

- (vi) The Commission shall have the discretion to investigate or not to investigate complaints based on hearsay, rumour or media reports. However, the Commission may conduct an enquiry to verify any violation of a gender discrimination that is reported in the mass media. This may be regarded or referred to as an enquiry presumably to distinguish such a process from a formal investigation that the Commission is empowered to take. Any such action in response to media reports is a matter for decision by the Commission.
- (vii) Complaints which are couched in offensive language are not to be dealt with and may be dismissed on that basis. However, if the matter otherwise appears to involve a significant violation of gender rights, it may be appropriate to offer the complainant the opportunity to submit a fresh complaint, with the necessary deletions, for assessment.
- (viii) Complaints containing matters which are within the jurisdiction of a Court or any statutory body, or tribunal are not to be dealt with and should be dismissed on that basis. This would include matters that are still being subjected to the internal processes of the body concerned. This will also mean that in instances where a complainant has access and has not exhausted all of the internal remedies of the body complained about such complaints will fall outside the jurisdiction of the Commission.

- (ix) Where the complainant confronts the non-judicial processes of the Court, the Commission may deal with it, but in such instances, considerations of the appropriateness of the remedies available on appeal, or elsewhere will weigh upon a decision to investigate a complaint. As an example complaints regarding sexual harassment must first follow the internal procedures of the body, organisation or entity complained of before a complaint may be assessed by the Commission. It is only in the event that such body, organisation or entity has no internal remedies to deal with such harassment that the Commission may deal with such a complaint.
- (x) Complaints concerning matters which are not to be dealt with in accordance with the aforementioned should be answered with a standard letter signed by or on behalf of the HoD. Once this letter is dispatched, the complaint file should be closed.

### **Referral of complaints**

- (i) If a complaint does not fall within the Commission's jurisdiction and could be more effectively or judicially dealt with by another appropriate body such as another Chapter 9 Institution, must be referred to that Institution within 30 days.
- (ii) Apart from the legislative imperative enjoining the Commission to cooperate with other complaint handling bodies, such a referral

ensures that the Commission makes best use of its limited resources to concentrate on the more significant matters of gender discrimination and that the complainants are provided with a more appropriate avenue through which they may obtain redress.

- (iii) In most cases, the alternative body which is better able to deal with the complaints should be readily identifiable. Where doubt exists about the other organisation's jurisdiction, telephonic enquiries may be made to the organisation, if necessary.

#### **4.1 Direct or indirect Referral**

- a. A direct referral is one in which the Commission passes the complaint to the relevant body and advises the complainant of this action.
- b. An indirect referral is one in which the Commission provides relevant contact details to the Complainant so that they may pursue the alternative avenue themselves.
- c. If it appears that the complainant is capable of doing this, an indirect referral will generally be appropriate.

- d. Standard letters of referral should be signed by or on behalf of the HoD. Given the fact that the Commission will not deal with the matter, the complaint should be disposed of as soon as possible. Once the letter is despatched, the complaint file should be closed.

## **5 Rejection of complaints**

- a. A complaint may be rejected if it is considered to be frivolous, vexatious, misconceived, unwarranted and manifestly incompatible with fundamental rights or does not comply with these provisions. Unlike complaints which are dismissed and not dealt with, or those that are referred, the decision to reject a complaint may be appealed.
- b. If the initial complaint is deficient in one or more ways, it may be appropriate to inquire from the complainant, either by telephone or in writing, in order to clarify the complaint and give an opportunity to the complainant to provide the Commission with the necessary details. The extent to which such screening enquiries are conducted will depend on the subject matter of the complaint. If the complaint is not very detailed, but clearly involves an allegation as an example, of unfair dismissal, it would not be appropriate to put the complainant to the trouble of detailing his or her complaint, only to have the Commission refer it to the Commission for Conciliation, Mediation and Arbitration (CCMA).

- c. All complaints must be lodged within three years of the occurrence of the alleged violation, with the proviso that the Commission may accept such a complaint if the Complainant is able to show good cause for the delay. Thus, the presumption is that “old” complaints will not be accepted and, given the limit of resources of the Commission, such complaints may be dismissed on this basis.
- d. Factors relevant to the consideration of the exercise of discretion include the impact of the delay on the ability of the Commission to investigate or otherwise effectively deal with the matter, and the possible prejudice to the Respondent, should the Commission accept the complaint. If the events giving rise to the complaint are very old, evidence, particularly by way of witnesses, will be difficult to obtain and the credibility of any such witnesses will be highly questionable.
- e. Regard must also be given to the Respondent who may have difficulty in replying to allegations about incident that occurred long time ago because they may be unable to recall relevant details. It may also be that the delay is the result of a matter being pursued in another forum especially where the Complainant remains dissatisfied with the outcome and approaches the Commission for alternative or additional relief.

f. Factors to be considered for “old” complaints are as follows:

- (i) That the alleged violation falls within the mandate of the Commission;
- (ii) That the Complainant should be given an opportunity to show good cause and reasons for the delay;
- (iii) The nature of the delay.
- (iv) Should the complaint be dismissed, the Complainant may appeal the decision.
- (v) Letters of rejection must be signed by or on behalf of the HoD within 30 days after the decision had been taken.

## **6 Appeal after rejection of a complaint**

- a. The decision to reject a complaint must be made within 30 days after receiving a complaint.
- b. The Complainant must be informed of the decision to reject a complaint and must be given reasons for the decision and advised

of his or her rights to appeal. Such appeal must be made in writing to the Chairperson of the Commission within 30 days of the finding becoming known to the Complainant.

- c. The Chairperson may either uphold or overturn the decision to reject a complaint and advise the Complainant of this decision within 90 days. If the Chairperson overturns this decision, the complaint is then referred back to the HoD who will determine the next appropriate cause of action.
- d. If no appeal is brought by the Complainant, the complaint file should be closed at the expiration of the period allowed for lodgement of appeals.
- e. Appeal requests received outside the stipulated period will not be considered or referred to the chairperson, unless a Complainant claims that he or she did not receive notification of the Commission's decision. The method of service as indicated on complaint form will be accepted as the method of service of all correspondence and communication with the Commission.



## **7 Review**

Decisions that is not in line with the Constitutional framework and which are contrary to the CGE policy or where an investigating officer has erred, or was biased, impartial, such decisions are subject to review. All applications for review must be submitted in writing to the Chairperson of the Commission, within 30 days from the date on which the decision had been communicated to the complainant.

## **8 Complaints**

- a. The assessment of complaints may require some enquiries to be undertaken by authorised personnel before the HoD formulates his /her view concerning the relevant issues. The following test must be applied when screening complaints;
  - Whether there is some form of discrimination of any kind including exclusion, distinction, or even restrictions, made on the basis of gender
  - Such discrimination must have the effect of making it difficult or even impossible for the affected person to exercise his or her rights and enjoy fundamental freedom.
  - Whether there is any other violation of some bodies rights, based purely on the fact that he or she is a man or a woman

- If the answer on the above is on the affirmation, then it means that the complaint fall within the CGE mandate, but if the answer is not in the affirmation the complaint does not fall within the CGE mandate. The CGE is empowered to handle complaints based on gender discrimination.
- Other relevant factors that needs to be considered when screening the complaint
  - (i) Issue of standing;
  - (ii) The relationship between the Complainant and the alleged incident;
  - (iii) Date of incident
  - (iv) Identity of the parties;
  - (v) Clarification of the facts alleged;
  - (vi) Existence of related Court and other proceedings;
  - (ix) Appropriateness of other remedies

- (x) or any other information that may be relevant.
- (b) If the Complainant fails to respond to the request for further information, a follow up letter should be sent within 30 days. If no response is received, the assessment should be concluded on the basis of the information available to the Commission.
- (c) Written requests for information should specify a deadline of 30 days for a response. Receipt of such information should be diligently followed to prevent unnecessary delays.
- (d) A letter acknowledging receipt of the complaint must be forwarded to the Complainant within seven days of receipt thereof. If the Respondent does not reply to the preliminary requests for information it will be necessary to complete the assessment of the complaint in the absence of such information. It may be appropriate, in these circumstances, to give the benefit of the doubt to a complainant and keep the complaint open as a formal investigation.
- (e) All complaints must be assessed within 30 days of lodgement with the Commission. If, after the initial screening of the complaint there is doubt as to whether the matter should be accepted as a

complaint, the matter should be referred to the Senior Complaints Officer and/ or HoD.

## **PART 3**

### **9 Investigations without a complainant**

In order to enable it to exercise its powers or perform its functions, the Commission shall investigate any gender related issues on its own accord.

### **10 Lodging of complaints**

#### **10.1. What is a complaint?**

- a. A complaint is a claim alleging unfair treatment on the basis of gender. Including but not limited to the following:
  - (i) Gender discrimination
  - (ii) Sexual harassment
  - (iii) Violation of gender rights
  - (iv) And any gender related complaints

## 10.2. How to lodge a complaint and procedures to be followed?

- b. A complaint must be lodged in the form of an affidavit and consequently in writing. Obtaining an affidavit in writing will assist the Legal Officer to assess it accurately and determine the most appropriate cause of action.
- c. Complainant must complete the *complaint form* in full that is available in all CGE offices.
- d. The Complainant should outline with sufficient detail what happened and where and when the alleged unfair treatment occurred.
- e. The complaint form must be signed by the Complainant and must be attested to by the Commissioner of Oaths. If more than one person is complaining, then all of the Complainants must sign and attest to the *complaint form*. All other persons signing and attesting to the complaint may do so in terms of a confirmatory affidavit.

## 11 Procedures

To ensure that the complaint processes are accessible, it is important not to make the process of lodging a complaint too difficult.

- (i) If a complainant is unable to put their complaint in writing for whatever reason the complainant may seek the assistance from a friend, relative, formal representative to put the complaint in writing for them.
- (ii) If this is not possible, they should be invited to the nearest CGE offices where the Legal Officer can assist with the filling up of the *complaint form*.
- (iii) If a person does not live near a CGE office, for example, they live in rural areas; a statement can be taken over the phone and forwarded to the Complainant for attestation. The nearest local police station will be of assistance with attestation.

## 12 Who can lodge a complaint with the CGE?

- (i) The following person or juristic persons may lodge complaint

- (ii) a person or group of people who are personally affected by the unfair treatment;
- (iv) a person or organisation acting on behalf of the affected person, such as an attorney, advocate, NGO, friend or family member;
- (iv) an association acting in the interests of its members;
- (v) anyone acting as a member of, or a representative of a group or class of persons;
- (vi) anyone acting in the public interest;
- (ix) In the event that persons are acting in the interest of their members or representative of a group or class of persons, and/or an NGO, it is important to ensure that such persons have a mandate to act in a Complainant's interests
- (x) If an organisation is the Complainant, then the head of the organisation or delegated representative should sign as the Complainant.

- (xi) It is important when dealing with a complaint from someone who is acting in their own interests to identify the relationship between them and the person or persons against whom the complaint is lodged. This is particularly important when mediating or conciliating a complaint, where it is essential that the person whose rights are at issue is able to determine and agree on how the complaint should be resolved
- (xii) Where a complaint is made on behalf of a group or class of persons, the group or class of persons should be adequately described and defined.

**13 A complaint may be lodged against the following individual or institutions**

Complaints can be made against individuals and organisations, including all National or Provincial State Departments and Administrations, Local Municipalities, Public Institutions, Statutory Bodies, Private Businesses and Institutions.



## **PART 4**

### **14 Management of a complaint**

#### **14.1. Securing of Complainant Statement**

- a. Once a complaint has been accepted, the Complainant must provide the Commission with a full statement under oath or affirmation, including details of all witnesses.
- b. It may be appropriate to interview the Complainant so that a detailed statement, with whichever supporting evidence is available, can be gathered.
- c. If a Complainant is not represented and does not appear capable of formulating the complaint with sufficient particularity on his or her own, such an approach may be the most effective way to proceed. Alternatively, if the Complainant is represented and/or able to particularise the complaint and gather evidence (documents or speak to witnesses) they should be asked to do so within a specified time frame.
- d. If relevant evidence is more likely to be in the possession of the Respondent, readily obtainable from them, it is not necessary to seek it from the Complainant at this stage.

## 15 Conciliation or Negotiation

In terms of the Act, the Commission is empowered to resolve matters or rectify acts or omissions by mediation, conciliation or negotiation.

- a. Depending on the nature of the complaint and the relationship between the parties, it may be appropriate to attempt conciliation with little or no investigation of the matter, beyond that which has been undertaken as part of the screening process.
- b. Such circumstances might include involving a Respondent who is usually cooperative with the Commission and a Complainant who appears to be seeking a reasonable outcome. If it appears to be a matter that may be amenable to a resolution by conciliation, this should be discussed with the Complainant and their agreement in writing, to this cause of action, be obtained
- c. The Respondent can be contacted, given details of the complaint and offer the opportunity to conciliate the matter. If both parties are amenable, the Legal Officer may convene a meeting as soon as possible, after consultation with the Senior Complaints Officer and/or HoD.

- d. All contacts with the parties throughout this process should be documented in file notes which are to be placed into the file. If the parties reach agreement, this should be documented in letters from the Commission to the parties which will also serve to record the fact that the complaint has been dealt with and the Commission's file will be closed on that basis.
- e. If complaints are formally investigated, the possibility of resolving them by conciliation or negotiation should always be kept in mind and considered as an option throughout the later stages of the complaint handling process.

## **16 Mediation**

- a. The Commission may decide as to whether the complaint can be resolve through mediation or not, this may be made possible if the parties to the disputes are willing to cooperate with the Commission.
- b. If the parties are advised to resolve the matter through mediation they must object to this procedure within seven days after been informed of the procedure by the Commission.

- c. In the case of mediation, the Commission may consider the appointment of a suitably qualified person to conduct such mediation.
- d. Head of Legal Department may recommend to the CEO that the mediator be appointed from outside the CGE and cost for the service be paid by the CGE.

## **17 Preliminary Investigations**

- a. Once a complaint has been lodged a preliminary investigation must be conducted within 30days.
- b. A preliminary report must be prepared after preliminary investigations.
- c. A decision to determine whether a full investigation can be launched or not must be based on the preliminary report

## **18 Investigations**

- a. Once a complaint is and it has been determined that a formal investigation (rather than conciliation, negotiation and mediation

intervention) is necessary, the Respondent will be notified in writing letter.

- b. The letter shall stipulate the powers of the Commission in connection with its investigation and the deadline for the receipt of the complainant's further particulars if required.
- c. The Complainant must complete the *complaint form* and get it signed by the Commissioner of Oaths and return it to the CGE office within seven days after receiving it.
- d. The CGE may not conduct any investigations if the *complaint form* is not signed by the Commissioner of Oaths.
- e. The Respondent must respond to the allegations in the form of an affidavit and received within 30 days of receipt of the complaint.
- f. The Commission's letter to the Respondent should also contain a copy of the Complainant's statement.
- g. If it is considered inappropriate to send a copy of the statement, the Commission's letter is to include a clear objective summary of the allegations, so that the Respondent is in a position to provide a

comprehensive response for the purposes of the Commission's investigation of the matter. This might arise in cases where it is against the public interest and/or is likely to be harmful to the Complainant if details of the Complainant or the allegations made available to the Respondent.

- h. Having set out the Complainant's allegations, the Commission's letter will then identify, by reference to the relevant sections of the Constitution, the rights that have been violated. A copy of the section cited should be included with the letter especially if the Respondent is unlikely to be familiar with these provisions
- i. Depending on the nature of the complaint, it may also be appropriate at this stage to state Commission's powers to mediate or conciliate any dispute.
- j. Any complaints, particularly the more serious or complex matters would require the Commission to include specific questions or direct the production of particular documents from the Respondent and the initial letter of enquiry may need to be adapted to take account of this. This means that, rather than simply leaving it to the Respondent to reply to the Complainant's allegations, the Commission is in a position to focus its inquiry to the central issues

of concern in terms of possible violations of gender rights so that on receipt of the Respondent's reply, it may be in a position to determine the most appropriate outcome for the resolution of a complaint. This support will ensure more efficient and effective investigations.

- k. In all cases the Commission's written notification of the receipt of a complaint to a Respondent should include a deadline of 30 days from the date of the Commission's letter within which the Respondent should provide a response to the Commission.
- l. If this deadline is not met, the Respondent is to be contacted, initially by telephone, to ascertain the reasons for the delay and to secure agreement in providing its response within a reasonable time. This new deadline is to be confirmed in writing by the Commission and the Complainant advised of the reasons for the extension.
- m. Continued failure to cooperate with the Commission's investigation of a complaint should be referred to the Senior Legal Office and/or HoD.

- n. On receipt of the Respondent's reply to the Commission's letter of enquiry, the matter is to be reviewed. If the response is sufficiently comprehensive, this may mark the end of the Commission's investigation.
- o. if the Respondent did not address all the issues raised in the letter to him or her or have listed issues that should be put to the Complainant, further investigation will be needed but, as with the initial notification, follow up correspondence with the parties should detail specific questions to be answered or evidence to be provided and set deadlines within which this is to be submitted.
- p. It may be that after investigation,, the Commission is still unable to conclude that there has been a violation of rights and if it does not appear to be amenable to resolution or this is not successful, the complaint may need to be referred to the HoD to determine the next appropriate steps.
- q. At the conclusion of its investigation, it may be appropriate for the Commission to refer or reject the complaint. This may occur if following in the course of the investigations; it is possible that at the preliminary stage, it is clear that the complaint does not involve a breach of human rights on the grounds of gender.



- r. If the complaint is resolved during the investigation a final report must be prepared and submitted the Senior Complaints Officer or HoD before the file can be closed.

## **19 Subpoena**

In conducting an investigation referred to in Section 11(1)(e) of the CGE Act, the Commission may inquire from any person such particulars and/or information as may be reasonably necessary or require any person by notice in writing to appear before the Commission at the time and place specified in such notice and produce to it the specified articles or document in possession of, custody and control of the person. It is also noted that the Commission may question such person before it under oath to assist the Commission in its investigation.

- (i) the Legal Officer in consultation with the HoD or Senior Complaints Officer decide to subpoena a witness through one or two Commissioners in terms of the above Section.
- (ii) The Legal Officer must draft a report outlining the grounds on which subpoena had to be issued and also stating all attempts that had

been made in trying to secure such evidence from that person with no success.

(iv) The report must be submitted to the Senior Complaints Officer or the HoD who will forward it to the Legal Committee for approval.

(iv) The Committee must advise the HoD on name of the Commissioner/s who will be available for that particular hearing.

(v) The HoD will have to make funds or all resources available for the execution of the subpoena and hearings and payment of the witness

## **20 Equality Courts**

In terms of PEPUDA, the Commission may litigate in the Equality Courts on behalf of any person who has been discriminated against in terms of PEPUDA.

a. The Legal Officers, after receiving a complaint and complete preliminary investigations may recommend to the HoD that a complaint be taken to the Equality Court.

- b. The HoD will forward the recommendation from the Legal Officer together with his or her opinion to the Legal Committee for a final decision.

## **21 Litigation in other Courts or Tribunal not in the Equality Courts**

- a. When there needs for litigation arises in the matter the Legal Officer will draft legal opinion and hand over the file to the Senior Complaints Officer with appropriate recommendations
- b. The file will then be handed over to the HoD who will assess the facts and forward it to the Legal Researcher for further action
- c. The legal Researcher will then assessed and finalised the Legal opinion that will be presented to the Legal Committee for a final decision.
- d. If the Legal Committee recommends litigation on the matter a Legal Practitioner who is in possession of necessary expertise in field shall be appointed following CGE Procurement Procedures

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Publications: Tel: (012) 334-4508, 334-4509, 334-4510  
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504  
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737  
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001  
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510  
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