

**EXAMINING THE ROLE OF THE OMBUDSMAN IN PROMOTING THE RIGHT TO  
FAIR ADMINISTRATIVE ACTION IN KENYA**

**BY**

**WINNIE JELAGAT TALLAM**

**A Research Project Submitted in Partial Fulfillment of the Requirements for the Award of  
the Degree of Master of Arts (Human Rights) of the University of Nairobi.**

**2019**

**DECLARATION**

This Research Project is my original work, and to the best of my knowledge has not been presented in any other university or learning Institution for the award of a degree.

Signed:.....

Date:.....

Winnie Jelagat Tallam

C53/69649/2013

This Research Project has been submitted with our approval as the University Supervisors.

Signed:.....

Date: .....

Dr. Francis Owakah

Signed:.....

Date: .....

Dr. Khamati Shilabukha

## **DEDICATION**

I dedicate this work to my late Grandfather, Jeremiah Cheptarus Kapterit who believed in education yet was never educated; and to my dear father Samuel Kapterit for giving impetus to this believe in me.

## **ACKNOWLEDGMENT**

I am beholden to the Almighty God for his providence and sustenance during my studies. I recognize my supervisors, Dr. Francis Owakah and Dr. Khamati Shilabukha for their invaluable guidance and counsel throughout this work. Special appreciation to my family for their encouragement and, specifically my father for his constant support and concern throughout my studies. I thank my friends; Amos Musundi, Margaret Rukwaro, Lilian Ntinyari and Ebbie Nanyama for their support and encouragement throughout my project work. I also extend my gratitude to the people of Kenya whom I interacted with as respondents and provided information, which has been critical in writing this project. To you all, may God bless you bountifully.

**TABLE OF CONTENTS**

**DECLARATION..... ii**  
**DEDICATION..... iii**  
**ACKNOWLEDGMENT ..... iv**  
**LIST OF FIGURES ..... viii**  
**LIST OF TABLES ..... ix**  
**LIST OF ABBREVIATIONS AND ACRONYMNS .....x**  
**ABSTRACT..... xi**

**CHAPTER ONE: GENERAL INTRODUCTION .....1**  
1.1 Introduction and Background to the Study ..... 1  
1.2 Statement of the Research Problem .....6  
1.3 Objectives of the Study .....7  
1.4 Justification of the Study .....7  
1.5 Scope and Limitations of the Study .....8  
1.6 Definition of Concepts .....8

**CHAPTER TWO: LITERATURE REVIEW .....10**  
2.1 Introduction.....10  
2.2 Ways in which CAJ promotes the right to fair administrative action.....10  
    2.2.1 Functions of the Ombudsman .....10  
    2.2.2 Mandate and Powers of CAJ.....12  
    2.2.3 CAJ’s Role in the Protection and Promotion of Human Rights .....14  
    2.2.4 The Right to Fair Administrative Action .....17  
2.3 The Convergence between KNCHR, CAJ and NGEC .....19  
2.4 Challenges and opportunities for CAJ in promoting the right to fair administrative  
    action .....20  
2.5 Theoretical Framework.....22  
    2.5.1 Theory of Accountability.....22

<b>CHAPTER THREE: METHODOLOGY .....</b>	<b>24</b>
3.1 Introduction.....	24
3.2 Research Site.....	24
3.3 Research Design.....	24
3.4 Population and Sampling .....	25
3.5 Data Collection Methods .....	25
3.6 Data Analysis .....	26
3.7 Ethical Considerations .....	26
<b>CHAPTER FOUR: PRESENTATION AND DISCUSSION OF THE FINDINGS ..</b>	<b>28</b>
4.1 Introduction.....	28
4.2 Response Rate.....	28
4.3 Demographic Data .....	29
4.3.1 Age Bracket of the Respondents .....	29
4.3.2 Gender .....	30
4.3.3 Marital Status.....	30
4.3.4 County of Residence.....	31
4.3.5 Ethnic Affiliation.....	32
4.3.6 Religion .....	32
4.3.7 Level of Education.....	33
4.3.8 Awareness levels about CAJ .....	33
4.3.9 Period of lodging complaints.....	34
4.3.10 Ways of lodging a complaint.....	35
4.4 Ways in which CAJ promotes the right to fair administrative action in Kenya .....	35
4.4.1 Nature of complaints .....	35
4.4.2 Action taken on a complaint.....	37
4.4.3 Time taken to conclude complaints .....	39
4.4.4 Satisfaction levels .....	40
4.5 The extent to which convergence of KNCHR, CAJ & NGEC promote the right to fair administrative action .....	41
4.5.1 Knowledge of other public institutions on human rights promotion.....	41

4.5.2 Awareness on the mandates of KNCHR, CAJ & NGEC .....	41
4.5.3 Preference among the three institutions.....	42
4.6 Challenges and opportunities for CAJ in promoting the right to fair administrative action .....	43
4.6.1 Opportunities for CAJ .....	44
4.6.2 Challenges encountered by Respondents .....	45
4.6.3 Powers of CAJ .....	46
4.6.4 Respondents' Recommendations to CAJ .....	49
<b>CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS.....</b>	<b>51</b>
5.1 Introduction.....	51
5.2 Ways in which CAJ promotes the right to fair administrative action in Kenya .....	51
5.3 The extent to which convergence of KNCHR, CAJ & NGEC promote the right to fair administrative action .....	52
5.4 Challenges and opportunities for the Ombudsman in promoting the right to fair administrative action.....	53
5.5 Conclusion .....	54
5.6 Recommendations.....	55
5.7 Suggestion for Further Research.....	56
<b>BIBLIOGRAPHY .....</b>	<b>57</b>
<b>APPENDICES.....</b>	<b>62</b>
<b>APPENDIX I: UNSTRUCTURED INTERVIEW GUIDE.....</b>	<b>62</b>
<b>APPENDIX II: RESEARCH LICENSE.....</b>	<b>67</b>
<b>APPENDIX III: TURNITIN REPORT .....</b>	<b>68</b>

## LIST OF FIGURES

Figure 4.1: Marital Status of the Respondents.....	31
Figure 4.2: County of Residents of the Respondents.....	31
Figure 4.3: Ethnic Affiliation of Respondents.....	32
Figure 4.4: Level of Education of the Respondents.....	33
Figure 4.5: Knowledge about CAJ.....	34
Figure 4.6: Nature of complaints lodged by the respondents .....	36
Figure 4.7: Time Taken to Conclude a Complaint .....	40
Figure 4.8: Preference among KNCHR, CAJ & NGEC.....	42
Figure 4.9 Staff Competencies and Institutional Complaints Mechanisms.....	44
Figure 4.10: Powers of CAJ.....	46



## LIST OF TABLES

Table 4.1: Age Bracket of the Respondents.....	29
Table 4.2: Period of lodging complaints.....	34
Table 4.3: How the Respondents lodged their complaints at CAJ .....	35
Table 4.4: Action taken by CAJ on a complaint.....	38
Table 4.5: Categorization of challenges faced by Respondents .....	45
Table 4.6: Reasons to go back to CAJ or not.....	48

## **LIST OF ABBREVIATIONS AND ACRONYMS**

ACHPR	African Charter on Human and Peoples Rights
ATI	Access to Information Act
CAJ	Commission on Administrative Justice
FAA	Fair Administrative Action Act
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
KNCHR	Kenya National Commission on Human Rights
KNHREC	Kenya National Human Rights and Equality Commission
NGEC	National Gender and Equality Commission
NHRI	National Human Rights Institutions
PCSC	Public Complaints Standing Committee
UDHR	Universal Declaration of Human Rights
UN	United Nations

## ABSTRACT

Fair administrative action is a core principle in public administration and a guarantee of fairness in decision making by persons whom power has been bestowed to exercise on behalf of others. It is also a human right guaranteed to every person by the Constitution of Kenya. This study sought to establish how the Commission on Administrative Justice (CAJ), also known as the office of the Ombudsman promotes the right to fair administrative action. The objectives of the study were threefold, namely, to examine ways in which CAJ promotes the right to fair administrative action in Kenya; to assess the extent to which the convergence of KNCHR, CAJ and NGEC promote human rights in Kenya, and to analyse the challenges and opportunities for CAJ in promoting the right to fair administrative action in Kenya. The study was conducted at the CAJ head office in Nairobi. Qualitative research design focusing on both primary and secondary data was applied. Primary data was collected by means of in-depth interviews administered to 30 respondents. Intensity sampling was used to select 30 cases on administrative justice that had been handled and concluded by CAJ between 2013 and 2018. An unstructured interview guide was utilised to obtain data from the respondents. Secondary data was collected by conducting document review of CAJ reports as well as other documents including legal instruments, books, articles, journals, publications and Acts of Parliament. The study found that CAJ has significant facilitative powers to enable it process complaints on violations of the right to fair administrative action and provide remedies to aggrieved persons. The study also found out that decisions of CAJ are enforceable as public entities are bound to comply with the decisions of CAJ unless they challenge the same in court, and if the facilitative powers are utilized exhaustively, they could deter violations of the right to fair administrative action. The study established that the three human rights institutions established in Kenya, namely KNCHR, CAJ and NGEC had not undertaken sufficient awareness creation for the public to be able to effectively utilize their services for human rights protection. The study further established that CAJ had more opportunities for enhancing its work in promoting the right to fair administrative action through the effective systems it has established and competent staff. The study recommends that CAJ should invest more in investigations when addressing complaints of violations of the right to fair administrative action. The study also recommends more targeted awareness initiatives by the human rights institutions to ensure optimum utilization of their services by the public.

## **CHAPTER ONE: GENERAL INTRODUCTION**

### **1.1 Introduction and Background to the Study**

The codification of human rights can be traced to 1948 with the enactment of the Universal Declaration of Human Rights (UDHR). Prior to this declaration, many other instruments recognizing the importance of human rights had been enacted, for instance the Magna Carta and the United Nations Charter, (Bösl & Diescho, 2009). These instruments acknowledge the fundamental nature of human rights and hoists the dignity, value and equality of human beings. The UDHR is a declaration of elementary and fundamental doctrines of human rights and freedoms. Further to the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were enacted in 1966.

ICCPR provides for individual autonomy and self-determination; and by signing it, states committed to protect and promote the civil and political rights of individuals. The ICESCR protects socio-cultural rights, which impose some cost element on governments to provide certain standards of living or meet cultural expectations of its people. The UDHR, ICCPR and ICESCR all form the International Bill of Human Rights, which provide the yardstick for other fundamental rights and freedoms, (Hannum, 1998). Many other human rights instruments were passed with obligations regarding protection of specific rights. African governments followed suit and in 1981, enacted the African Charter on Human and Peoples Rights (ACHPR). The ACHPR aims at codifying human rights in Africa.

All the human rights instruments impose on every state party the core responsibility to promote, protect and fulfil human rights. Aside from this, states are required to create mechanisms for safeguarding human rights and one such mechanism is the establishment of National Human Right Institutions (NHRIs). These are internal institutions that are obligated to secure observance and realization of human rights of persons within a state. As states complied with this requirement, there arose challenges, one of which was standardisation brought about by rapid growth of NHRI's and complexity resulting in institutional diversity, thematic diversity and varying core protection activities, (UN, 2010). This led to the need for formulation of minimum standards that could be fairly assessed and accredited (UN, 2010). The Paris Principles of 1993 set international standards, which are the minimum requirements for the establishment of NHRIs. These include proficiencies and duties of the holders of such offices, membership of the institution, independence of the institution, methods of its operation and endowment with quasi-judicial functions (Paris Principles, 1993).

These requirements were very much relevant to the Kenyan context. The relevance is anchored in the fact that in Kenya, violations of human rights have been prevalent since independence (Oyugi et al., 2003). The Constitution of Kenya (1963) was not comprehensive in human rights protection and it took a considerable long period for the Government to show initiative towards human rights protection through establishment of the requisite institutions. The first human rights institution was the Standing Committee on Human Rights, established in 1996 through an Executive Order of the President (Idike, 2004). It is noteworthy to state that this premier human rights institution was established after the civil society had supplanted the Government as the defender of

human rights within the country by establishing the Kenya Human Rights Commission in 1991. That notwithstanding, the mandate of the Standing Committee was to probe abuses of human rights and investigate allegations of abuse of authority, cases of unfair treatment and injustices in the public service. Although the Committee made some progress in human rights interventions including investigations, public education, checking prison conditions and state forces amongst others, it was castigated as lacking autonomy and legitimacy and was seen as a form of disguise by the Government to merely demonstrate compliance with international pressure (Idike, 2004). In 2002, the Government of Kenya established the Kenya National Commission on Human Rights as a replacement of the Standing Committee on Human Rights. This was followed in 2008, by the establishment of the Public Complaints Standing Committee (PCSC). The mandate of the PCSC was to address complaints of improper administration in the public service. In essence, the human rights function and maladministration were separated. The PCSC was later found to be ineffective for many reasons, among them the inability to enforce its recommendations and compel public officers to respond to its inquiries and concerns (Kempe, 2013).

Article 59 of the Constitution of Kenya, 2010 provides for the Kenya National Human Rights and Equality Commission (KNHREC) with the overall mandate to promote and protect human rights, promote gender equality and address maladministration in the public service. In terms of its setup, the KNHREC took up characteristics of NHRIs since it is established under the Constitution apart from being imbued with operational, functional and financial independence, legal capacity, investigative and quasi-judicial functions.

Article 59(4) of the Constitution gives Parliament the discretion to restructure KNHREC into two or more separate Commissions. Consequently, Parliament established three Commissions, namely the Kenya National Commission on Human Rights (KNCHR) to address breaches of human rights, the Commission on Administrative Justice (CAJ) to address maladministration and administrative injustices in the public service and the National Gender and Equality Commission (NGEC) to deal with issues of gender equality, equity and non-discrimination. In the execution of their mandates, the three Commissions receive complaints, conduct inquiries, and undertake investigations as well as public hearings. Each Commission is empowered to summon any person, interrogate a person in relation to matters they investigate and demand for any relevant documents. They are also required to collaborate in their activities.

Once KNCHR, CAJ or NGEC conclude an inquiry or an investigation, they submit their recommendations to the relevant person or entity (respondent) for implementation. The respondent is required to report on the measures and steps it has taken to comply with the recommendations, and if it fails to do so, these Commissions are required to report to the National Assembly on the failure to implement the recommendations and the National Assembly is required to take ‘appropriate action’. The law has not defined the meaning of ‘appropriate action’ and it is not clear what will happen if the National Assembly does not take action (CAJ Act, s. 43).

In its first Annual Report of 2012, CAJ identified inadequate enforcement mechanisms for its decisions, determinations and recommendations as a challenge in the execution of its mandate. This challenge has been replicated in its subsequent reports with recommendations to Parliament to enhance its powers in light of the levels of violations

of the rule of law in the country. The Ombudsman all over the world has been established to provide non-binding decisions, (Rowat, 1997). Reif (2000: 18) however argues that the inability of the Ombudsman to issue binding recommendations should be understood as a strength and not weakness. This is because an Ombudsman derives authority from the quality of the work that it does, the political support it receives, access by the citizens to its services, the expertise of the office holder and its ability to utilize mediation (Reif, 2000: 18). This distinguishes it from a court of law that uses coercive powers. In fact, Kirkham, (2011:5) notes that the ability of an Ombudsman to enforce its recommendations depends on respect that public institutions have towards it, which is gained through the efficiency of its strategies and conduct as opposed to use of coercive powers. Other scholars have argued that the enforcement of an Ombudsman's recommendations is based on moral persuasion (Anderson, 1987: 8). This, however, has been challenged in the sense that persuasion may only work only in environments where there is respect for the rule of law (CAJ, 2013: 40).

In 2013, CAJ cited six public institutions and officers as unresponsive while in 2014, it cited 32 and in 2015, it cited 13 (CAJ, 2014). Citation is a strategy used by CAJ to sanction public entities and officers who are unresponsive, fail to implement its recommendations, engage in improper conduct or fail to honour its summonses. In 2015, CAJ forwarded its recommendations to the Vision 2030 Delivery Board, but the Board failed to implement the same. The National Assembly also did not take any action against the accounting officer of the institution and the aggrieved person filed a suit in court seeking a mandatory order to secure enforcement of the recommendations of CAJ. The court, however, found that the recommendations of an Ombudsman are discretionary and



a public officer or entity cannot be forced to implement them. Thus, more often than not, the public is left wondering about the purpose and efficacy of issuing recommendations that have no force at all. Does this setting affect the role of CAJ as it seeks to promote the right to fair administrative action?

## **1.2 Statement of the Research Problem**

Having established NHRIs institutions in Kenya in compliance with the Paris Principles, the extent to which these institutions protect and promote human rights is worth examining. This is in light of the fact that the three NHRIs, namely KNHCR, CAJ and NGENC provide recommendations from their interventions and report to the National Assembly in case of disobedience by public entities. While the National Assembly is required to take appropriate action, it is not clear what the appropriate action is, and the recourse if the National Assembly fails to take the recommended action. This issue becomes more pertinent when examining the Ombudsman whose establishment worldwide is to issue non-binding decisions in the nature of recommendations, which are discretionary.

The use of persuasion as opposed to coercive powers should be looked at in the context of Kenya, often characterised by disrespect for the rule of law to the extent that even court decisions are disregarded (CAJ, 2013, 40). It is in line with this that this study was designed to examine the role of the Ombudsman in promoting right to fair administrative action in Kenya in light of this enforcement question, the opportunities and challenges. The study thus was formulated to seek answers to the following research questions:

1. In what ways does CAJ promote the right of fair administrative action in Kenya?
2. To what extent does the convergence of KNCHR, CAJ and NGEC promote human rights in Kenya?
3. What are the challenges and opportunities for CAJ in promoting the right to fair administrative action?

### **1.3 Objectives of the Study**

#### **General Objective**

To explore the role of CAJ in promoting the right to fair administrative action in Kenya

#### **Specific Objectives**

1. To examine the ways in which CAJ promotes the right to fair administrative action in Kenya
2. To assess the extent to which the convergence of KNCHR, CAJ and NGEC promote human rights in Kenya
3. To analyse the challenges and opportunities for CAJ in promoting the right to fair administrative action

### **1.4 Justification of the Study**

The study is significant as it seeks to add to the growing body of knowledge in the area of administrative justice in human rights in Kenya. In this case, interested scholars could identify new areas of interest for further academic and policy research. The study findings if adopted may also be important to policy makers in the area of administrative justice in general as well the particular regard of the human rights dimension.

For that matter, this study provided a platform from which to examine the role of the CAJ after its establishment. The unique set up of CAJ as an office of the Ombudsman provides the use of soft powers to enforce recommendations and the impact thereof on the promotion of human rights. These study findings may then contribute to discussions on the Ombudsman's role in human rights promotion and whether as established, there is need to enhance the powers for enforcing of its recommendations.

### **1.5 Scope and Limitations of the Study**

This study focused on the role of CAJ in promoting the right to fair administrative action in Kenya. It covered the period between 2013 and 2018. CAJ has its headquarters in Nairobi with branch offices in Eldoret, Kisumu, Mombasa and Isiolo.

The researcher anticipated the limitation of accessibility of respondents owing to the fact that interviews were administered to persons who lodged complaints with CAJ between 2013 and 2018 and the complaints were concluded. The researcher, however, sought to address this limitation by administering phone interviews as much as possible and only conducted face-to-face interviews for respondents who were available.

### **1.6 Definition of Concepts**

**Administrative action** – This is the conduct of activities and decision making in the public sector

**Administrative justice** – In this work, this will refer to administrative actions of government, her agents or those people working on its behalf in ways that affect everyday lives of members of the public

**Effectiveness** – This refers to the rate at which CAJ intervenes based on an evaluation of its intervention that work towards promoting the right to fair administrative action. It is measured by the amount of time this intervention takes to solve a complaint

**Fair administrative action** – This refers to the impartiality and reasonableness in decision making by public entities and officials

**Maladministration** – In this work, this refers to forms of ‘service failure, delay, inaction, inefficiency ineptitude, discourtesy, incompetence and unresponsiveness’ in the public service

**Ombudsman** – This is the institution established to investigate the conduct of public bodies and officials and provide a remedy. It is a watchdog over public service delivery

**Resolved complaint** – In this study, it will refer to the process beginning from the time a complaint is filed to the point of conclusion and marked ‘closed’ notwithstanding the fact that the complainant is satisfied or not.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

This section reviews existing literature on the ways in which CAJ promotes the right to fair administrative action in Kenya, the extent of convergence between KNCHR, CAJ and NGEC and how it promotes the right to fair administrative action as well as the challenges and opportunities for CAJ in promoting the right to fair administrative action in Kenya.

### **2.2 Ways in which CAJ promotes the right to fair administrative action**

#### **2.2.1 Functions of the Ombudsman**

According to Reif (2004), the Ombudsman is an institution established by parliament to oversee the work of the executive arm of Government by investigating complaints raised by the citizens against public entities. International Ombudsman Institute (2000) describes the Ombudsman as:

“ An office established by a Constitution or statute headed by an independent high level public official who receives complaints about injustice and maladministration from aggrieved persons against government agencies, officials and employees or who acts on his/her initiative.”

It is described as an agent who represents the citizens against arbitrary government conduct. The objective of which the institution is established is to improve public administration and enhance governmental accountability to the public (Reif, 2004). In essence, it acts as a ‘check’ on governmental power.

The concept of the Ombudsman can be traced in Sweden in 1809 where an official then known as *Justitieombudsman* was appointed and charged with the mandate to look into complaints made by the public regarding public offices and report to parliament for implementation. Some scholars have however stated that early models of the Ombudsman could be found in India and China dating as far back as 3000 BC where an official was appointed and given the role of receiving grievances from citizens, reporting where there were mistakes and providing appropriate remedies (Satyanand, 1998). The model developed in Sweden gained wide application and spread to Scandinavian countries including Finland in 1917, Denmark 1954 as well as Norway in 1962 before being taken up by the rest of the world (Satyanand, 1998).

The concept of the Ombudsman gained fast popularity as it was seen as a simple, inexpensive and direct method through which citizens could seek redress against adverse actions of bureaucratic government. Other avenues through which citizens could seek redress such as parliament, media and the judicial system had long become less effective as originally envisaged. The institution was also seen as a way through which to reduce the number of complaints brought before members of parliament and ministers (Satyanand, 1998). It was, in this respect, a quick method to provide fast relief to citizens angered by the actions of the enormous machinery of the government.

In Africa, the institution of the Ombudsman first developed in Tanzania through the country's interim constitution in 1965, which laid down the basic structure of the institution. However, scholars have remarked that the concept as adopted in African states is different from the original models. For instance, the first models in Tanzania and Zambia existed under a one-party system. (Tonwe, 2013). In Zimbabwe and Mauritania,

these institutions operated under semi-liberal democracies while in South Africa, the institution was applied mostly to entrench the interests of the apartheid regime rather than to help the citizenry (Tonwe, 2013).

In Kenya, the Ombudsman was re-established as the Commission on Administrative Justice in 2011. Previously, the Public Complaints Standing Committee (PCSC) which was established in 2008 played this role.

### **2.2.2 Mandate and Powers of CAJ**

CAJ derives its functions from Article 59 (2) of the Constitution, the CAJ Act No. 23 of 2011 and the Access to Information Act No. 31 of 2016. Article 59 (2) of the Constitution and Section 8 of CAJ Act bestows CAJ with the mandate to inquire into allegations of maladministration in the public sector. Forms of maladministration include “service failure, delay, inaction, inefficiency ineptitude, discourtesy, incompetence and unresponsiveness” (CAJ Act, s. 8). CAJ also investigates complaints of administrative justice, which includes “an act or decision carried out in public service and failure to act when necessary”. It also focuses on acts of abuse of authority and improper conduct by public officials. CAJ is further required to help public institutions establish effective complaints handling mechanisms and to provide advisory opinions on topical issues on administrative justice. It can further recommend compensation in cases where injustices have been established.

To effectively perform the above functions, CAJ is vested with the power to issue summons, administer oaths, hear and determine complaints on administrative justice and to compel the production of information and documents, (CAJ Act, 2011). CAJ is

required to issue recommendations to the public entity under investigation or inquiry on the outcomes of the investigation and recommendations thereof; the action the public entity is required to take and the reasons for it. It may require a public entity to report to it on the implementation of the recommendations and if the public entity refuses to implement the same, it is empowered to report to the National Assembly, which is then required to take 'appropriate action'. However, what is not clear is what would happen if the National Assembly fails to take the 'appropriate action'. Sihanya, (2015, 47) highlights the opportunity of CAJ to successfully implement the right to fair administrative action provided in Article 47 of the Constitution and the challenge of institutional bureaucracy that it has to deal with especially during its foundational years.

Under the Access to Information Act, CAJ's mandate is to oversight and enforce the Access to Information Act. It does this by investigating breaches of the right to information; assessing and evaluating the use of proactive disclosure of information by public entities; conducting public education and awareness on access to information; monitoring Kenya's compliance with international treaty obligations on the right to information; adjudicating on complaints and conducting review of decisions on violations of the right to access to information; and promoting data protection (ATI Act, 2016: 21).

To effectively oversight and enforce the right to information, CAJ is required to utilize the powers given to it by the Constitution and the CAJ Act which have been outlined above. Additionally, it is empowered to make decisions, which bind all public institutions and some private entities. The power to make binding decisions is new to CAJ and to many Ombudsman institutions.



### **2.2.3 CAJ's Role in the Protection and Promotion of Human Rights**

Reif, (2000: 86) states that the function of an Ombudsman in the protection and promotion of human rights depends on its classification. Thus, it can be either a classical or a human rights Ombudsman. A classical Ombudsman has the singular mandate of addressing grievances against public entities and promoting administrative justice whereas a human rights Ombudsman has the express function to protect and promote human rights of individuals against government and to oversight government entities for legality and fairness. Despite the distinction, the nature of Ombudsman's function of resolving complaints carries with it a component of protection and promotion because human rights violations by public entities may at the same time constitute maladministration, (Reif, 2000: 86). In resolving complaints, such Ombudsman institutions apply human rights standards provided in international human rights instruments. Furthermore, the laws of some jurisdictions give the Ombudsman mandate over discriminatory administrative decisions of public entities.

Accordingly, an Ombudsman acquires its role to protect and promote human rights if it is expressly established as a human rights Ombudsman or if established as a classical Ombudsman, by the nature of the work that it does or by legislative empowerment. Some of the countries which have established a classical Ombudsman playing human rights' protection and promotion mandates include Norway, Denmark, Netherlands, France, Iceland, New Zealand, some Canadian Provinces and Hong Kong. This is the reason Ombudsman institutions are classified as NHRIs, (UN, 2010:15). In both models of Ombudsman, human rights infringements call for the attention of the Ombudsman

especially in cases involving prisons, social services, police forces, military and refugee institutions among others.

The Ombudsman as established in Kenya may be described as a human rights Ombudsman. This is based on the fact that apart from playing the customary role of an Ombudsman and therefore promoting human rights in its interventions, CAJ has specific legislative mandate to promote the right to fair administrative action and the right to Access to Information. This is notwithstanding the fact that a separate institution, (KNCHR) is established and given the general obligation to oversight human rights promotion and protection in Kenya.

CAJ's responsibility in human rights protection and promotion covers civil, political, economic, social and cultural rights. Tigerstrom (1998:115) highlights the critical place that the Ombudsman takes when it comes to safeguarding economic social and cultural rights. By oversighting all public entities that provide basic services to citizens, the Ombudsman acquires its central role and thus contributes to citizens realizing their economic, social and cultural rights. Reif (2004;114) however, notes that the fact that economic, social and cultural rights are implemented subject to the availability of resources may be an impediment to the Ombudsman in its endeavor to promote these rights.

The Ombudsman's function in protecting and promoting civil and political rights derives from its mandate of addressing complaints against improper public administration and administrative injustices. Reif (2004) argues that by scrutinizing administrative matters, larger human rights issues or civil liberties arise which the Ombudsman is called upon to

question and give remedial action. Some of civil and political rights are easily enforceable by the Ombudsman, as they have been entrenched in domestic legal instruments. For those that have been properly legislated on, the Ombudsman plays a mere constructive role to ensure their observance. Other categories of rights, for example the right to fair hearing, have other frameworks and processes established to ensure their protection. For this category, it is agreed that it would be better to allow the respective frameworks or institutions to ensure their protection and the Ombudsman would only be playing an oversight role. Political rights are especially heavily legislated as opposed to economic, social and cultural rights (Tigerstrom, 1998:115).

The Ombudsman's impact in human rights promotion is realized through strategies aimed at influencing change in law and ethos of the government. It does this by making human rights proposals in legislation and government policies, uphold principles of servant leadership in the public service, seek judicial interpretations on matters of public interest touching on its mandate and provide advice and human rights education amongst others, (Reif, 2004: 100).

The Ombudsman executes its human rights protection role mainly through complaints handling. It investigates complaints arising from the conduct of public entities as they relate with the citizens (Reif, 2004:101). Although the Ombudsman was traditionally established to provide non-binding decisions as noted above, some Ombudsman institutions have recently been established with powers to enforce its decisions.

It would therefore, be critical to understand the levels of responsiveness by public entities in Kenya to CAJ's recommendations and its impact in promoting these rights. The effectiveness of the Ombudsman in promoting and protecting civil and political rights and economic social and cultural rights is dependent on the cooperation of public entities as it only provides recommendations.

#### **2.2.4 The Right to Fair Administrative Action**

An Ombudsman institution is primarily concerned with safeguarding administrative and public law rights. This area of law describes what public administration must do and provides for remedies in instances of bad public administration. Fair administrative action as a right is based on equitable doctrines and requires fairness by public entities and officials in the conduct of their activities in order to serve the interests of the public, (Segita, 2017:85). These doctrines include the principles of natural justice, encompassing right to a fair hearing and to unbiased decisions, the right to complain about actions of a government body as well as equality before the law and non-discriminatory treatment. Unfair administrative conduct and practices of public entities and officials result in breaches of fundamental rights of individuals.

The Constitution safeguards the rights classified as natural justice rights under Article 47 and provides for the right to fair administrative action that must be administered in a timely, efficient, fair and lawful way. Additionally, it entitles a person affected to be provided with reasons for any such action. The Fair Administrative Action (FAA) Act, 2015 further codifies this right and identifies CAJ as one of the redress institutions for

violations of the right to fair administrative action, aside from the courts. The Fair Administrative Action Act defines ‘administrative action’ as:

*The powers, functions and duties exercised by authorities or quasi-judicial tribunals; or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates. (FAA, 2015, S.2).*

The FAA Act, 2015 saves the common law principles and the rules of natural justice as parameters to be used in determining the fairness of administrative action. The principle of natural justice is an English Law concept explaining the importance of decision makers making unbiased decisions and according each person an opportunity to be heard. Bias is manifested in partiality of a decision maker that leads to prejudice against one party. Fair hearing requires that a person is given notice and accorded an opportunity for a hearing before a decision is made on their case. These principles impose on a decision maker the duty to act fairly.

For the right to fair administrative action to be realized, there must be compliance with substantive norms and administrative procedure in law. This means that the decision must be made by a person authorized to undertake it, the person must comply with the law, relevant standards must be followed and the reasoning for the decision must be justified. Graaf et.al (2007, 10) thus notes that in delivering public services, public institutions must ensure active and adequate information is provided to the people, the citizens are helped in the process, the citizens are fairly given an opportunity to be heard and their opinions considered, meticulous preparation is done, choice of the most favourable

alternative and the least onerous decision is made and timeliness in service delivery and decision-making are adhered to.

### **2.3 The Convergence between KNCHR, CAJ and NGEC**

The KNCHR, CAJ and NGEC are all Constitutional Commissions established out of restructuring of the Kenya National Human Rights and Equality Commission (KNHREC) provided for under Article 59 and 252 of the Constitution. Article 59 (2) (a) to (k) of the Constitution lists the functions of KNHREC which can be summarized into three main functions, that is to promote and protect human rights, to promote gender equality and equity and to promote good public administration. Article 249(1) further provides that the functions of constitutional commissions and independent offices established under the Constitution are to “protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles; and promote constitutionalism”. Article 59 (4) of the Kenya Constitution 2010 grants Parliament the discretion to restructure KNHREC into one or more separate commissions, through enactment of legislation. Consequently, through the KNCHR Act, 2011, CAJ Act, 2011 and NGEC Act, 2011, Parliament established the KNCHR with the role to promote and protect human rights, CAJ to promote good public administration by investigating complaints of maladministration and NGEC to promote gender equality and equity respectively.

As part of promoting good public administration, CAJ is mandated to inquire into complaints of administrative justice (CAJ Act, s. 8). Anthony (2015) notes that administrative justice does not have a single definition but refers to a set of values borrowed from the practice of judicial review and principles of good governance. The

result is that administrative justice entails application of principles of legality, fairness and rationality, as well as transparency, accountability, public participation and efficiency amongst others. In essence, CAJ promotes the right to fair administrative action by inquiring into complaints of administrative justice in the public sector. This is in addition to its mandate of overseeing and enforcing the right to access to information. On the other hand, KNCHR has the overall mandate to promote and protect human rights in Kenya, and rightly, fair administrative action is a human right. The NGEC's mandate of promoting gender equality, equity and non-discrimination also presents itself in the spectrum of human rights promotion. This creates a point of convergence in institutional mandates of the three institutions and it is worth examining how this promotes the advancement of the right to fair administrative action.

#### **2.4 Challenges and opportunities for CAJ in promoting the right to fair administrative action**

As Osakede & Ijimakinwa (2014) note, the greatest impediment of an Ombudsman institution is lack of punitive powers. As a result, their decisions are rendered as recommendations with no direct obligation imposed on a public entity or officer to abide by the decisions of the Ombudsman. CAJ has, in its reports raised the issue of unresponsiveness and impunity by public entities and officers to be hindering the execution of its mandate (CAJ, 2016). In its 2013 Annual Report, CAJ noted that there was need to enhance its legal framework to enable it enforce its findings and determinations by imposing sanctions on malfeasant public officers. Other challenges raised include inadequate funding, inadequate human resource and low awareness levels on its existence.

Reif (2004) states that the nature of an Ombudsman is that it issues non-binding recommendations. Such recommendations are thus implemented based on cooperation and goodwill from the public entities and officers in what has been described as ‘moralsuation’ (Otiende, 2015). While this has worked in other jurisdictions, Otiende notes that the culture of moralsuation has not worked well in Africa and suggested adoption of coercive powers. In the case of *Republic v Kenya Vision 2030 Delivery Board & another Ex-parte Eng Judah Abekah* [2015] eKLR, the court was called upon to issue an order of mandamus directing the Kenya Vision 2030 Delivery Board to implement a recommendation that had been issued by CAJ. In declining the application, the court stated that:

“As the Commission cannot compel a state agency to implement its recommendations, it follows that the Court cannot compel a government agency to implement such recommendations. Government agencies have no statutory duty to implement the recommendations of the Commission. They cannot therefore be compelled by way of mandamus to implement those recommendations. I therefore find that an order of mandamus cannot issue as prayed for by the Applicant.”

Although some authors see the lack of enforcement powers as a challenge to an Ombudsman, others see it as an opportunity. Kirkham, (2011:5) notes that the ability of the Ombudsman to enforce its recommendations depends on respect that public institutions have towards the Ombudsman, which is gained through the efficiency of its strategies and conduct as opposed to use of coercive powers. He therefore advocates for more utilization of mediation and other alternative dispute resolution mechanisms by the



Ombudsman in order to ensure enforcement of its recommendations. While there are other challenges facing the Ombudsman in the execution of its mandate, this research will be focusing on challenges and opportunities related to its enforcement powers.

## **2.5 Theoretical Framework**

### **2.5.1 Theory of Accountability**

Accountability denotes responsibility. Basically, to hold a public body or a public official accountable aims at ensuring that their internal procedures and policies are lawful and fair and mirror the general interests of the public, and that the body or official performs its mandates in line with the clearly laid down processes. The proponent of the theory of accountability, Thomas Bivins (2006), states that accountability denotes responsibility for actions done by a person. It means being answerable to one's deeds or actions. Thus, accountability is subjected to external oversight, regulation and mechanisms of punishment to enable the responsible body/official to respond to the appropriate standards.

Accountability can be vertical or horizontal. Vertical accountability means the power of oversight held by relevant bodies and authorities while horizontal accountability refers to the power of an organization to appraise review the conduct and performance of organizations of equal status to ensure their actions are proper. Horizontal accountability may take two forms; namely offices designated with evaluation and to ensure compliance and independent inspection mechanisms that conduct impartial investigations to monitor how mandates are conducted (Wahi, 2006).

The nature of the Ombudsman institution is that it is an accountability body that plays both vertical and horizontal accountability. In regard to vertical accountability, the Ombudsman is charged with oversight over public bodies and officials to ensure that decisions made by these public bodies and officials adhere to the law, and may, in exercise of that power recommend that a particular action be taken, a decision made be vacated or compensation be paid where necessary. The Ombudsman plays the horizontal accountability role by working with other constitutional commissions and independent offices ‘to promote constitutionalism, securing the observance of democratic values and principles and protecting sovereignty of the people’ as mandated in the Constitution.

Further, being an accountability institution, the Ombudsman oversees public entities to ensure that their powers, functions and duties are exercised within the law, fairly, expeditiously and efficiently. The Ombudsman also ensures public entities follow a lawful procedure and provide reasons for every action taken or omission that affects the legal rights of a person. In essence, its interventions in this regard promote the realisation of the right to fair administrative action.

## **CHAPTER THREE: METHODOLOGY**

### **3.1 Introduction**

This section presents the research site, the research design, the methods and tools of data collection that were adopted. The section then explains the study population, sample and the sampling process, the procedures that were used to analyse data and how the findings are presented. The final part of the section presents the ethical considerations borne in mind in the course of the study.

### **3.2 Research Site**

This research was conducted in Nairobi County. Nairobi hosts the Commission on Administrative Justice Headquarters in Westlands Sub-County. The study was conducted at the CAJ head office since over the years, it has recorded substantially high number of complaints compared to the branch offices based in Mombasa, Kisumu, Eldoret and Isiolo. For instance, in 2014, the Nairobi office received 79,693 against 1,067 complaints received by its Mombasa and Kisumu branch offices, (CAJ, 2014). In 2015, the Commission's Nairobi office handled 117,936 complaints against 2,379 handled by its Kisumu, Mombasa and Eldoret offices, (CAJ, 2015).

### **3.3 Research Design**

The study applied a qualitative research design using primary and secondary data. Primary data was collected using in-depth interviews. These captured the characteristics of the respondents such as behaviour, opinions, knowledge and beliefs of a given individual or group of people. An in-depth interview guide was used. This was triangulated with secondary data drawn from documents in the Commission's archive.

### **3.4 Population and Sampling**

The population for this study was all the citizens who have ever lodged complaints with CAJ and had their complaints resolved. A complaint that has been resolved for the purpose of this research refers to a complaint that has been brought to a conclusion and marked 'closed', notwithstanding the fact that the complainant is satisfied or not. In order to derive a sample for in-depth interviews, I reviewed 1180 complaints on the issue of administrative justice and selected 30 complaints. The review focused on the intensity of a case in order to identify information rich cases in as far as it regards an administrative injustice. Furthermore, the researcher reviewed CAJ's reports beginning from 2013 up to 2018 and relevant laws.

### **3.5 Data Collection Methods**

The study collected both primary data and secondary data. Primary data was collected through in-depth interviews, using an in-depth interview guide. This was administered to 30 selected participants, through a face to face interview, mainly, where this was not possible, some participants were interviewed through the telephone. Apart from the qualitative data on attitudes and perceptions of the justice system, the in-depth interviews also collected some quantitative data on the demographic and background characteristics of the research subjects. The interviews were conducted over a period of two weeks. The researcher used an electronic recorder to record the conversations which were later transcribed for interpretation and analysis. Primary data was also collected using observation and informal interviews. In this case, I used notes during the informal interviews to capture a number of issues which were pertinent to the research questions. These were instrumental in augmenting the information captured from the in-depth

interviews. Secondary data was collected from published and unpublished books, journal articles and reports. This was used for triangulation purposes as a bulwark for the primary data. Some of the sources for these data were CAJ reports from 2013 to 2018 as well as other documents including legal instruments, books, and articles, journals, publications and Acts of Parliament.

### **3.6 Data Analysis**

Most of the data was qualitative, which was obtained by conducting interviews. Data analysis focused on qualitative data. Analysis was conducted on the primary data after transcription of the data from the field, which was cleaned and axial coded for themes. This entailed grouping data into emerging themes and assigning sub-topics to related themes followed by generalization and interpretation of phenomena. Information from secondary data was subjected to data mining and reflexive analysis. The data was then presented in quotes, anecdotes and narratives. Quantitative data was analysed by computing the necessary statistics such as means, percentages, medians and modes. These were then presented in tabular, graphic or narrative formats.

### **3.7 Ethical Considerations**

To ensure this research study remained ethical, it purposed to promote confidentiality by maintaining the privacy of information obtained during the study and maintaining objectivity. Respondents were informed that the research is only for academic purposes and any information they provide will be kept confidential. Further, the respondents were informed that they were to be de-identified in the process of report writing.

Respondents were also informed of the whole procedure and what is expected from them. Participation in the study was voluntary. The researcher sought and obtained permission from the relevant authorities to conduct this study.

## **CHAPTER FOUR: PRESENTATION AND DISCUSSION OF THE FINDINGS**

### **4.1 Introduction**

This chapter focusses on presentation of data, analysis, interpretation and discussions of the findings. The study utilized an unstructured interview guide to obtain data and information from respondents. The aim of the study was to obtain the views of the respondents based on their experiences with CAJ in resolving their complaints. This was guided by three objectives, namely to examine ways in which CAJ promotes the right of fair administrative action in Kenya, to assess the extent to which the convergence of KNCHR, CAJ and NGEC promote human rights in Kenya and to analyse the challenges and opportunities for CAJ in promoting the right to fair administrative action in Kenya. This chapter presents the results based on the three objectives. The results are presented in terms of charts, graphs and tables as well as narrative analysis.

### **4.2 Response Rate**

Thirty (30) respondents were targeted for interview and in order to reach this target, the researcher contacted 36 respondents. Among the six respondents who could not be reached, two did not answer the phone calls on three occasions, three could not be reached on phone as they were offline and one declined to participate in the interview. Thus, the response rate was 83% and this can be attributed to the willingness of the respondents to take part in the study.

### 4.3 Demographic Data

Data on age, gender, marital status, county of residence, tribe, religion and level of education of the respondents were sought in order to establish whether there is any relationship between these sets of demographic data and violations of the right to fair administrative action as well as lodging of complaints with CAJ. Other information was also sought at this stage on how the respondents knew about the existence of CAJ and the various ways they used to lodge complaints at CAJ. This was found to be important to understand the mechanisms CAJ has put in place to ensure access to its services by the public, the level of awareness of the public on the existence of these mechanisms and their levels of utilization.

#### 4.3.1 Age Bracket of the Respondents

The question on age bracket sought to establish the ages of persons who lodged complaints at CAJ. The responses to this question are presented in Table 4.1 below:

**Table 4.1: Age Bracket of the Respondents**

<b>Age Bracket</b>	<b>Frequency</b>	<b>Percent</b>
18-30	6	20
31-40	6	20
41-50	6	20
51-60	8	27
61 & Above	4	13

As shown in Table 4.1 above, majority of respondents were in the age bracket of 51-60 years at 27%, followed by those in the age brackets of 18-30 years, 31-40 years and 41-50 years, all at 20% and lastly those aged 61 years and above at 13%. The results give an indication that violations of administrative justice committed by public entities affect



persons of all ages almost in equal measure with persons aged between 51 and 60 years affected more.

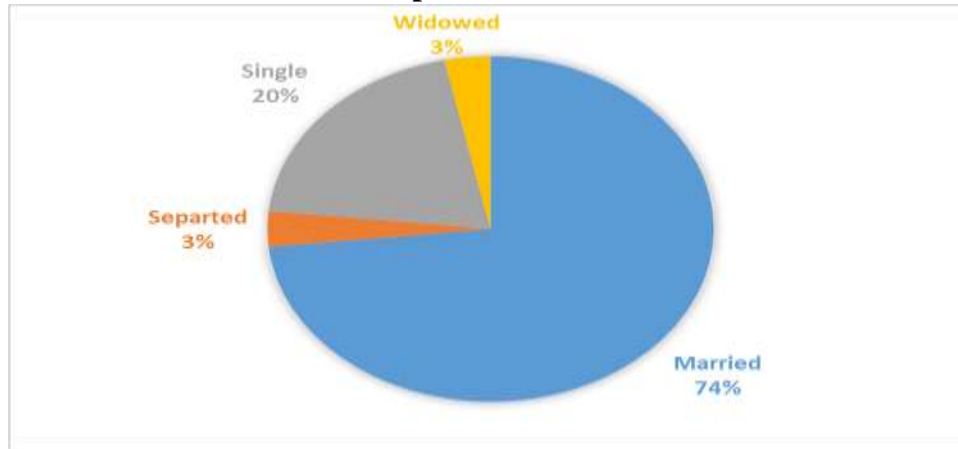
#### **4.3.2 Gender**

Gender is an important parameter when it comes to access to justice since it can give an indication of the category of persons most affected by administrative injustices based on gender and how various groups report injustices. The results showed that 69% of the respondents were male while 31% were female. This could mean that the male are more affected by violations of the right to fair administrative action as compared to the female. It could also mean that the female do not report complaints on violations of their rights. This result is consistent with the data contained in the annual reports of CAJ between 2014 and 2018 that show that more male lodged complaints compared to females. For instance, in its Annual Report of 2017/2018 financial year, CAJ reported that the male constituted 65% while the female constituted 21% of complainants and 14% were corporate and groups.

#### **4.3.3 Marital Status**

The results show that 74% of the respondents are married, 20% single, 3% separated and 3% widowed. This means that complainants of various marital status participated in the study. The results on the question on marital status are presented in Figure 4.1 below.

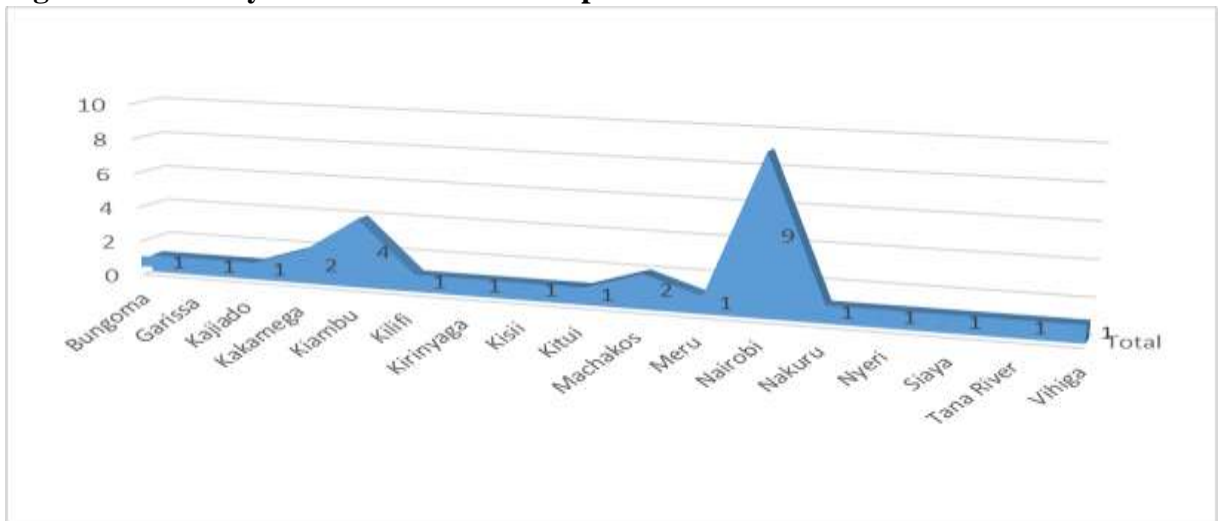
**Figure 4.1: Marital Status of the Respondents**



**4.3.4 County of Residence**

Understanding the County of residence of the respondents reveals the extent to which the Head office of CAJ serves people from various counties. It is worth highlighting that this study only focused on the Head office, but CAJ has four regional offices in Eldoret, Mombasa, Kisumu and Isiolo. The regional offices serve the counties of presence as well as neighboring counties. The results are presented in Figure 4.2 below:

**Figure 4.2: County of Residents of the Respondents**



From the above results, the respondents interviewed were residing in seventeen counties, the majority drawn from Nairobi County at 30%, Kiambu County at 13%, both Kakamega and Machakos Counties at 7% and the remaining 13 counties at 3%. The results also indicate that the Head office serves people from any county.

#### 4.3.5 Ethnic Affiliation

Ethnic identity may represent how various tribes view or respond to violations of human rights. This study sought to establish the tribes of the respondents that lodged complaints with CAJ during the period of study. The results showed that the 30 respondents interviewed represented 11 tribes with the Kikuyu leading at 33%, Luhya at 17%, Kamba at 13%, Luo, Maasai and Mijikenda, all at 7% and Duruma, Meru, Embu, Somali and Kisii all at 3%. The results are presented in Figure 4.3 below.

**Figure 4.3: Ethnic Affiliation of Respondents**



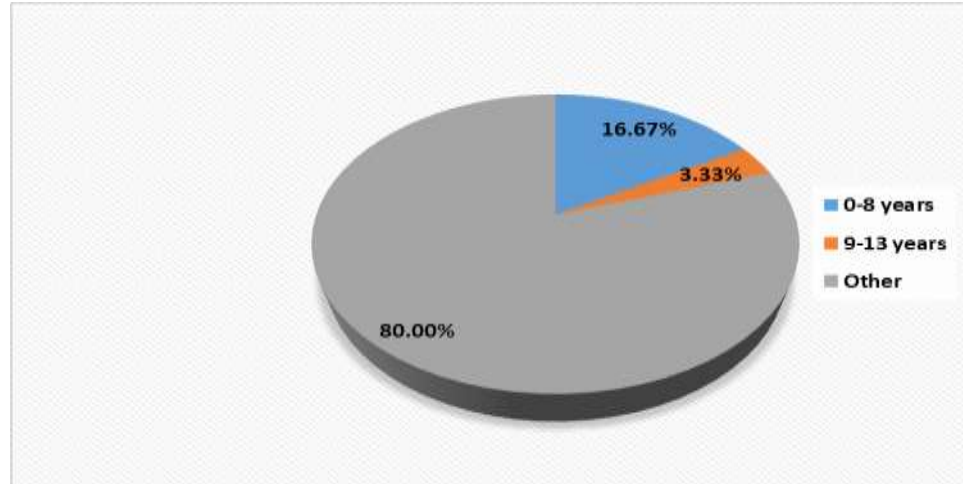
#### 4.3.6 Religion

Information on the religion of the respondents was sought. The results reveal that 90% were Christians while 10% were Muslims.

#### 4.3.7 Level of Education

Level of education may reflect awareness about human rights violations and mechanisms of redress as well as the ability of a person to report violations. Figure 4.4 presents the findings on education levels of the respondents.

**Figure 4.4: Level of Education of the Respondents**



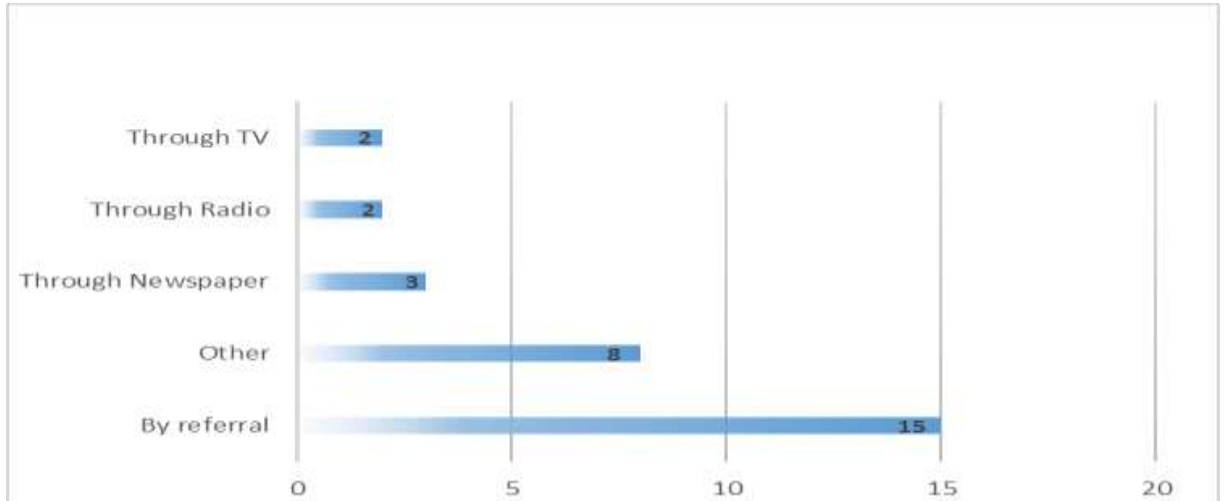
From the results, it is evident that 80% of the respondents have post-secondary education either at the tertiary or university level while 16.67% had secondary education and a paltry 3.33% had primary education. This could be interpreted that more educated persons had the knowledge about CAJ and were able to report administrative injustices in the public sector.

#### 4.3.8 Awareness levels about CAJ

Awareness levels show how the respondents got knowledge about CAJ. From the results, 50% of the respondents knew about CAJ through referrals, 10% through Newspapers, 7% through the Radio, 7% Television and 27% through other means. Other means were through the Huduma Centre and CAJ activities like ASK shows. There were also

respondents who indicated that they had prior knowledge of the existence of CAJ since its inception. These results are presented in the Figure below.

**Figure 4.5: Knowledge about CAJ**



#### 4.3.9 Period of lodging complaints

Respondents were asked to indicate the year they lodged their complaints. This was to ensure that complaints within the period of study were recorded and analyzed. The results are shown in Table 4.2 below.

**Table 4.2: Period of lodging complaints**

Year	Frequency	Percent
2013	4	13.33%
2014	5	16.67%
2015	5	16.67%
2016	4	13.33%
2017	6	20%
2018	6	20%

#### **4.3.10 Ways of lodging a complaint**

Respondents were asked to indicate the means in which they lodged their complaints with CAJ. This question shows the mechanisms CAJ has put in place to ensure the public can report violations with ease. The results are shown in Table 4.3 below.

**Table 4.3: How the Respondents lodged their complaints at CAJ**

<b>Lodging Complaint</b>	<b>Frequency</b>	<b>Percent</b>
Visited the office	8	26.67
Through a referral	2	6.67
Sent a letter by post	6	20
Through Huduma Centre	2	6.67
Through a phone call	3	20
Through email	7	23.33
Other	2	6.67

The results reveal that many respondents at 26.67% visited the office to lodge their complaints while 23.33% emailed their complaints to the office, 20% phoned the office reporting a complaint, 6.67% lodged visited the Huduma Centre to lodge their complaint, another 6.67% were referred to CAJ by other entities and 6.67% used other means to lodge their complaints. These other means according to the respondents were through the CAJ website by filling an online complaint form. These results speak to the mechanisms CAJ has put in place for the public to access its services, which include physical offices, email, postal address, Huduma Centre, Toll free line and partnerships entered into for the purpose of referral of complaints (CAJ, 2015)

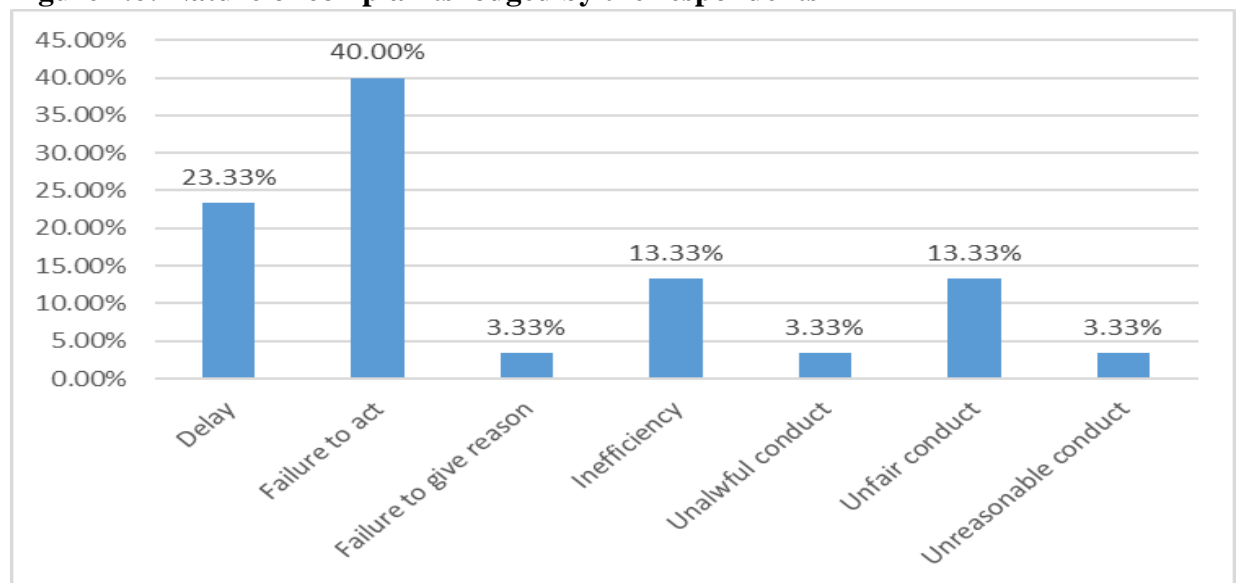
#### **4.4 Ways in which CAJ promotes the right to fair administrative action in Kenya**

##### **4.4.1 Nature of complaints**

This study focused on ways in which CAJ promotes the right to fair administrative action through complaints handling. It sought to establish the nature of complaints on

administrative injustices that were reported to CAJ during the period of study. The classification of complaints was done based on the meaning of the right to fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act. Basically, this looked at decision making by public entities and focused on the requirements of promptness, good organization, legality, rationality and procedural fairness. It also focused on acts of omission or failure to take action and the failure to give reasons for action taken that affect the entitlements of an individual. Figure 4.6 presents the findings on the nature of cases reported by respondents.

**Figure 4.6: Nature of complaints lodged by the respondents**



From the above, 40% of complaints constitute failure to act by a public entity (an act of omission) while 23.33% were cases of delays in service delivery, cases of inefficiency and unfair conduct follow at 13.33% and cases of failure to provide reasons for an administrative action taken, unlawful and unreasonable conduct each amount to 3.33% of complaints. This result mirrors the nature of complaints as captured in the Exit Report of

the premier CAJ's commissioners issued in 2017 titled 'Laying Foundation for Administrative Justice In Kenya: Six Years Later'. According to the report, complaints handled by CAJ between 2011 and 2017 included cases of delay and unresponsive official conduct topping the list. Furthermore, CAJ Annual Report, 2015 listed cases handled that year which ranged from cases of unresponsive official conduct (an act of omission or failure to act) to delays, unfair treatment and inefficiency among others.

Section 8 of the CAJ Act, 2013 mandates CAJ to 'investigate conduct in state affairs or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice'. The Act further mandates it to 'investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector'. Furthermore, the Act mandates CAJ to 'inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service'. These actions and omissions by public entities constitute violations of the right to fair administrative action as provided for in Article 47 of the Constitution and the Fair Administrative Action Act.

#### **4.4.2 Action taken on a complaint**

The study sought to establish the action taken by CAJ on the complaints. The CAJ Act, 2011 provides for various ways in which CAJ may take action on a complaint. These include action through inquiries, investigations, conduct of hearings, alternative dispute resolution. The CAJ Regulations, 2013 further allows CAJ to participate in court



proceeding or before a tribunal as interested party, interveners or *amicus curiae* in the execution of its mandate. From the study, 73.33% of the respondents indicated that CAJ took action through inquiries by writing letters to the public institutions, 13.33% did not specify what form of action CAJ took in their complaint, but only indicated that CAJ made follow ups with the public entities concerned, 3.33% stated that CAJ referred them to other institutions to assist them, 3.33% stated that CAJ did not take any action on their complaint and 3.33% indicated that they did not know what action was taken by CAJ. Section 8 (f) of the CAJ Act requires CAJ to apply alternative dispute resolution (ADR) methods in addressing complaints and to work with other state organs to promote and protect human rights in public administration. Accordingly, some of the follow-ups could be attempts to infuse ADR. These results are presented in Table 4.4 below.

**Table 4.4: Action taken by CAJ on a complaint**

<b>Action Taken on Complaint</b>	<b>Frequency</b>	<b>Percent</b>
Letter of inquiry issued	22	73.33
Investigated	1	3.33
Referred	1	3.33
Followed up	4	13.33
No action taken	1	3.33
Don't know	1	3.33

Respondents were also asked to state whether they made follow ups at CAJ after lodging their complaints. 47% stated that they made follow-ups while 53% did not make follow-ups. The reasons given for not making follow-ups were that CAJ kept updating them frequently and they did not see any need to follow up. Others indicated that it was expensive to make follow ups at the office because of the distance.

Respondents were further asked to comment on the responsiveness and cooperation by CAJ staff as they made follow-ups, specifically whether the officers at CAJ were ready to help them. 87% indicated that the CAJ officers were ready to assist them when they made follow-ups while 13% indicated that the officers were not ready to assist them. Some respondents stated that the officers updated them on the progress of their cases and advised them to wait further.

#### **4.4.3 Time taken to conclude complaints**

The study also looked at the time taken by CAJ to conclude a complaint. This question is important because the Constitution and the Fair Administrative Action Act requires expedition when taking an administrative action. Violation of the requirement of expedition is manifested in delay in taking an action by a public entity and some of these cases are reported to CAJ. In the same breath, CAJ is required to exercise expedition in resolving complaints. In its annual report of 2013, CAJ stated that resolution of complaints lodged before them depended on cooperation from public entities complained against (CAJ, 2013). Thus, delay in resolving a complaint may be a reflection of the level of cooperation by public entities offered to CAJ. It could also reflect on the effectiveness of mechanisms adopted by CAJ to resolve complaints.

In this study, respondents were asked to indicate the time it took for their complaint to be concluded. 23.33% of complaints took between 0-3 months to be concluded, 13.33% took a period of 4-6 months, 6.67% took a period of 7-9 months, 20.00% took a period 10-12 months, 20.00% took over a year and 16.67% were never concluded. The results are as below:

**Figure 4.7: Time Taken to Conclude a Complaint**



#### **4.4.4 Satisfaction levels**

The respondents were asked whether they were satisfied with the outcome of their complaint. 60% indicated that they were satisfied while 40% indicated that they were dissatisfied with the outcome. For those who responded positively, they stated that CAJ's intervention in the matter made the concerned public entities act and resolve their issues while those who were not satisfied indicated that CAJ did not assist them claim their rights. From the response, it may be concluded that a positive or a negative response was largely based on whether the respondent obtained what they sought or not. Thus, for those who obtained a remedy, they responded positively while those who failed to obtain a remedy responded negatively.

On further efforts that CAJ would have put in addressing the complaints, many respondents stated that CAJ should have interrogated cases further and even conducted investigations on the same. Many respondents felt that it was not enough for CAJ to rely only on the response from the public entity, but should have conducted its own investigations to verify the responses.

#### **4.5 The extent to which convergence of KNCHR, CAJ & NGEC promote the right to fair administrative action**

This question was premised on the fact that the Constitution under Article 59 envisages one institution to promote and protect human rights, which is the KNHREC. Article 59(4) further gives Parliament the discretion to restructure the KNHREC into one or more separate commissions and it is on this basis that Parliament established the KNCHR, CAJ and NGEC. Accordingly, this part sought the respondents' views on their understanding of the three human rights institutions as restructured and the role they play in human rights protection.

##### **4.5.1 Knowledge of other public institutions on human rights promotion**

Respondents were asked to indicate whether they knew about any other public institution that would have intervened in their complaint. 86% of the respondents stated that they did not know about any other institution that would intervene in their complaint while 14% indicated that they were aware about other public institutions. For those who indicated awareness on other public institution, they identified the court as an institution that can address their complaint and promote their human rights.

##### **4.5.2 Awareness on the mandates of KNCHR, CAJ & NGEC**

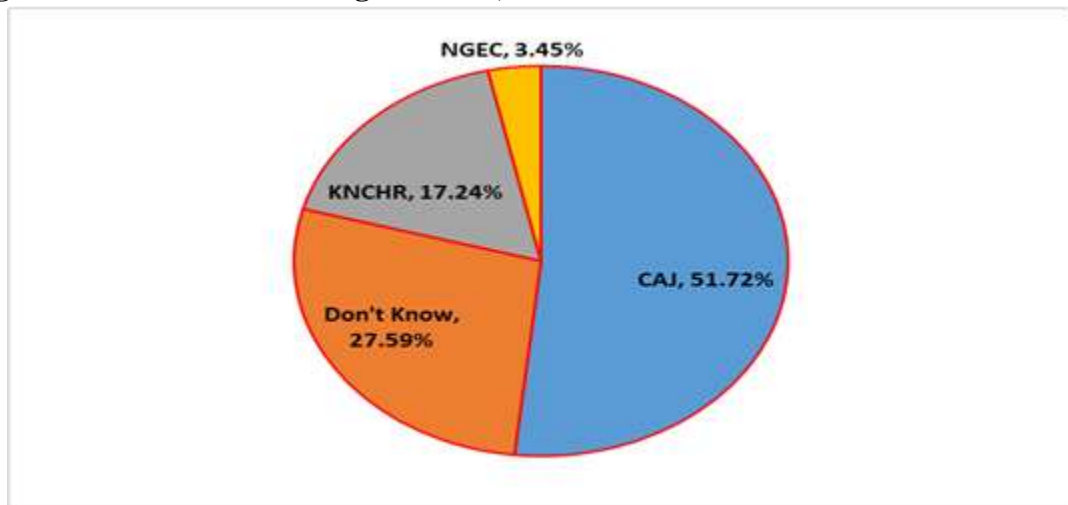
Respondents were assessed on their awareness of the existence of the three human rights institutions and their functions. 53% stated that they understood the work of the three institutions while 47% stated that they did not understand their work. From the results, the respondents understood the work of CAJ and KNCHR more as compared to their understanding of the work of NGEC. However, it was notable that many of the

respondents interpreted the mandates of the three institutions from their titles rather than detailed understanding of what they do. Additionally, the respondents' understanding of CAJ's mandate was mainly based on the fact that they had interacted with it, having lodged a complaint at CAJ.

#### 4.5.3 Preference among the three institutions

In terms of preference among the three institutions, 51.72% of the respondents stated that they would prefer to lodge complaints with CAJ, 17.24% with KNCHR and 3.45% with NGECC while 27.59% were indifferent and stated that they did not know. Some of the reasons given for preference for CAJ was due to the fact that the respondents had interacted with CAJ and stated that they were satisfied with how their complaints were addressed and they would go back. Others felt that their issue was against a public entity, thus CAJ was more appropriate while others felt that KNCHR had more powers. The results are presented in Figure 4.8 below.

**Figure 4.8: Preference among KNCHR, CAJ & NGECC**



From the above results, it is apparent that the three institutions established for human rights protection need to put more effort on awareness creation on their functions and their significance in human rights protection. The fact that many respondents are not aware of their distinct mandates also raises the question of the necessity to restructure the KNHREC to the three institutions or retain it as a single human rights institution. The NGEC Act, CAJ Act and KNCHR Act require the three institutions to work with each other “to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration” in the protection and promotion of rights.

It is worth highlighting that the restructuring of KNHREC and the subsequent establishment of CAJ and KNCHR was to be reviewed by Parliament after five years pursuant to Sections 55 of both the CAJ and KNCHR Act. The review was to focus on the functions of the two commissions with a view to merging them with the review date being 2016, but the review has not been done to date and the institutions continue to operate separately as restructured. On its part, the NGEC Act does not provide for review of the NGEC.

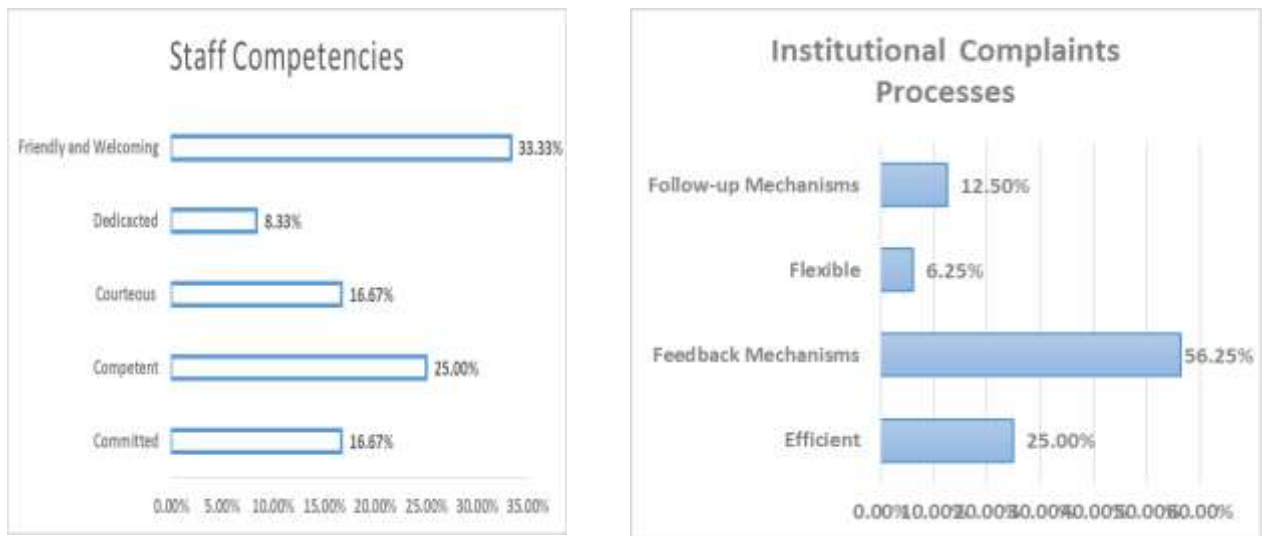
#### **4.6 Challenges and opportunities for CAJ in promoting the right to fair administrative action**

This part focused on the challenges and opportunities for CAJ from the respondent’s perspectives. The researcher further reviewed reports of CAJ issued during the period of study on its challenges and opportunities. The results are as follows:

### 4.6.1 Opportunities for CAJ

These are positive perspectives from respondents about CAJ. Respondents were asked to indicate what they liked about CAJ. The responses were classified in terms of staff competencies and institutional complaints processes. The results are presented in Figure 4.9 below:

**Figure 4.9 Staff Competencies and Institutional Complaints Mechanisms**



From the above, CAJ has potential to take advantage of its competent staff (25%), friendly and welcoming staff (33.33%), committed and courteous staff both at 16.67% and dedicated staff at 8.33%. the study also revealed that in terms of complaints handling processes, CAJ had instituted processes that are efficient (25%), flexible (6.25%), follow-up mechanisms for complaints (12.50%) and feedback mechanisms to complainants (56.25%).

#### 4.6.2 Challenges encountered by Respondents

51.72% of the respondents stated that they faced challenges in the process of having their complaints addressed while 48.28% stated that they did not face any challenges. Among those who faced challenges, the same can be categorized in the following themes:

**Table 4.5: Categorization of challenges faced by Respondents**

<b>Challenge</b>	<b>Frequency</b>	<b>Percent</b>
Delay within CAJ	7	43.75
Inaction by CAJ	2	12.50
Failure to respond to letters of inquiries	6	37.50
High turnover of complaints handling officers	1	6.25

From the above, the challenges faced by the respondents as they pursued to have their complaints addressed were majorly due to delays by CAJ (43.75%). Inaction by CAJ, which essentially is failure to take an action was 12.50% while failure by public entities to cooperate with CAJ by responding to its inquiries was 37.50% and high turnover of complaints handling officers stood at 6.25%. This means that some of the challenges were caused by CAJ itself either through its processes and approaches and can best be addressed internally. In the Exit Report of the premier CAJ's commissioners, (CAJ, 2017), CAJ attributed the long delay in addressing complaints leading to long turn-around time for resolution to widespread impunity in the public service and that:

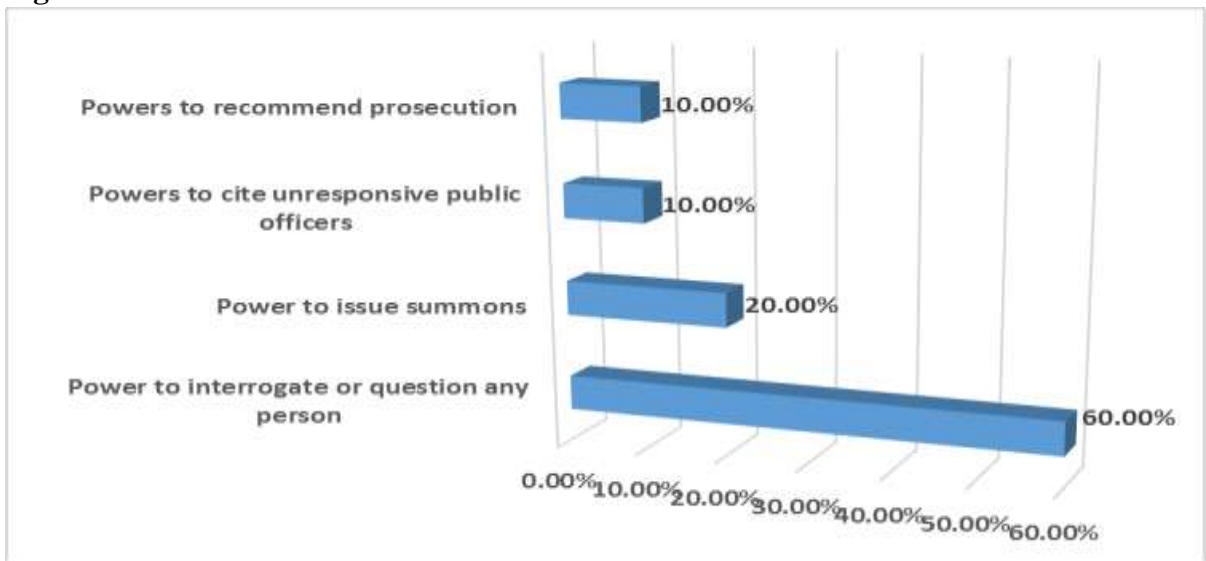
“Impunity manifests itself in lack of respect for the rule of law, including flagrant disregard to set standards and procedures, and unresponsiveness to the public needs and poor service delivery”



### 4.6.3 Powers of CAJ

Respondents were asked whether they thought CAJ had powers to resolve complaints. 68.97% responded in the affirmative while 31.03% responded in the negative. Among the reasons given for the affirmative answers were that CAJ has been given powers under the law as presented in the table below;

**Figure 4.10: Powers of CAJ**



Other reasons given were that the fact that public entities responded to CAJ's inquiries meant that it had powers to protect the right to fair administrative action. In the contrary, those who indicated that CAJ did not have powers stated that the fact that public entities could disregard CAJ's inquiries was an indication of its lack of powers. Others stated that the fact that CAJ uses alternative dispute mechanisms to address complaints means that they do not have enforcement powers.

Article 252(3)(a) empowers CAJ to issue summons to witnesses for the purposes of investigations. Furthermore, the CAJ Act empowers CAJ to administer oaths, hear and

determine cases on administrative justice, compel production of any information and summon any person to attend appear before it, and interview any person, all for the purpose of execution of its mandate. Section 42 of the CAJ Act provides for the action to be taken after considering a case on inquiry or investigation that involves issuing a report to the public entity concerned with recommendations on action to be taken. CAJ may then require the public entity to submit a report to it on the steps taken to implement the recommendations and if the public entity fails to implement the same within a specified period, CAJ may report the public entity to the National Assembly and the National Assembly is required to take appropriate action.

In the case of *Republic v Kenya Vision 2030 Delivery Board & another Ex-parte Eng Judah Abekah [2015] eKLR*, the Applicant sought an order of mandamus to compel the Kenya Vision 2030 Delivery Board to implement recommendations of CAJ issued on 10<sup>th</sup> October 2013 after an investigation. The court in its ruling held that public entities have no statutory obligation to implement the recommendations of CAJ. In particular, the court stated:

“...a public agency may or may not act on the findings and recommendations of the Commission. A public agency can therefore exercise discretion when it comes to the implementation of the reports of the Commission.”

However, this decision was overturned by the Court of Appeal in the case of *Commission on Administrative Justice vs. Kenya Vision 2030 Delivery Board & 2 others (2019) eKLR* where the court ruled that decisions of CAJ were enforceable. The court stated that:

“Likewise, upon the appellant intervening on behalf of the 3<sup>rd</sup> respondent and substituting the one year contract with an award of compensation, the 1<sup>st</sup> respondent was obligated to implement that decision in the absence of any move by them either to appeal against it or to apply to have it quashed through an appropriate court process.”

The court further reasoned that the requirement of reporting to Parliament is for the purpose of annual reporting by CAJ of its activities undertaken in the year which is required of public entities when they are discharging their constitutional and statutory mandates. The court further noted that CAJ is not required to report to Parliament on each and every investigative report issued in the discharge of its mandate and that reporting to Parliament was not the only way to ensure enforcement of CAJ’s decisions. Accordingly, decisions of CAJ are enforceable and should be complied with unless challenged in a court of law.

The study further sought to establish whether the respondents would consider going back to CAJ if they had similar complaints, 93.10% respondents stated that they would go back while 6.90% said they would not go back. The table below shows the reasons given for decision whether to go back or not.

**Table 4.6: Reasons to go back to CAJ or not**

<b>Reason to go back</b>	<b>Frequency</b>	<b>Percent</b>
No option	8	26.66
Mandated to address administrative injustices	3	10
Previous good experience	12	40
Efficient and effective complaints handling process	5	16.67
Previous bad experience (Not go back)	2	6.67

From the above, whether a respondent would go back to CAJ if they faced a similar abuses of their right to fair administrative action would be based on previous experience which can either be positive (40%) or negative (6.67%), the efficiency and effectiveness of CAJ's processes and procedures (16.67%, the fact that it is mandated to deal with violations of administrative justice (10%) and by the fact that they have no other option (26.66%).

#### **4.6.4 Respondents' Recommendations to CAJ**

Finally, respondents were asked to give recommendations that CAJ should adopt to improve its services when addressing complaints as it seeks to promote the right to fair administrative action. The results have been categorized into human resource capacity and competence of CAJ, awareness creation initiative, enforcement powers and regional presence. The respondents felt that CAJ should train its staff on complaints handling and customer care. A specific emphasis was made on officers based at the Huduma Centres who are young and seemed not to have proper training on customer care. It was further recommended that CAJ's regional offices should be supported to have the same standards as those in the head office. It was also recommended that high turnover of staff had affected the resolution of complaints since a respondent ended up being served by many officers as a result of high turnover.

On awareness creation, respondents recommended that CAJ should enhance its public awareness initiatives since many people were not aware of its existence. On enforcement powers, recommendations were presented in two perspectives; first, the need for CAJ to exhaust its powers of investigations, summons, recommending prosecutions. It was

recommended that CAJ should cap the number of letters of reminder and take appropriate action when a public entity fails to respond to its inquiries and follow-ups. Secondly, it was recommended that due to high levels of impunity in the public service, it was important to give more powers to CAJ to enable it deal with defiant public officers. An example was given of the 'big people' mentality and the need for CAJ to be able to deal with such people. Lastly, on regional presence, the respondents felt that CAJ should decentralize its services to all counties and make its services accessible to the people.

## **CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter presents the findings of the study, conclusions, recommendations as well as suggestion on areas for further research. These are derived from the objectives of the study, which sought to explore the role of the Ombudsman in promoting the right to fair administrative action in Kenya.

### **5.2 Ways in which CAJ promotes the right to fair administrative action in Kenya**

The first objective of the study sought to examine ways in which CAJ promotes the right to fair administrative action in Kenya with an emphasis on complaints handling. The study established that CAJ receives complaints on violations of the right to fair administrative action, mainly delays in service delivery, inefficiency, unfair and unreasonable conduct, failure to act as well as failure to provide reasons where an administrative action affects the fundamental rights and freedoms of a person. In essence, these issues constitute violations of the right to fair administrative action as outlined in Article 47 of the Constitution and Fair Administrative Action Act, 2015.

The study also established that once CAJ receives complaints, it seeks remedies for the same through inquiries in the form of letters to the public entity concerned or commence investigations. However, the use of investigations is significantly low as compared to inquiries, yet investigations provide a critical analysis and interrogations of the issues in a complaint. CAJ also takes action through follow-ups in the form of telephone calls,

meetings and other alternative forms of dispute resolutions. In some instances, action involves a referral to the appropriate entity to act on a particular issue.

From the study, CAJ has put in place feedback mechanisms to update complainants on the status of their cases and it is the reason that many of the respondents did not make follow-ups on their complaints because they were constantly updated. CAJ officers were also responsive to those who made follow ups and assisted them. However, the time taken to resolve complaints by CAJ took a long period of time with only 23.33% of complaints being resolved within three months. This is a long time and may in itself amount to a violation of the requirement of expedition, an element of the right to fair administrative action. CAJ attributes the long turnaround time to resolve complaints to unresponsiveness by public entities. This then raises the question whether CAJ has sufficient powers to hold ensure public entities respond to its inquiries and sanction the unresponsive institutions and this will be addressed below. The study, however, established that the satisfaction levels of the respondents on CAJ's complaints handling in protecting the right to fair administrative action was fair at 60%.

### **5.3 The extent to which convergence of KNCHR, CAJ & NGEC promote the right to fair administrative action**

The study found out that although Parliament restructured the KNHREC into three commissions, namely KNCHR, CAJ and NGEC, many respondents were not aware about these institutions and their responsibilities in human rights protection. The problem this state of affairs poses is underutilization of these institutions by the citizens and opportunities for overlaps. The element of overlap may arise since fair administrative

action is a human right, yet KNCHR is established to promote and protect human rights generally. Although there is a provision for referral mechanisms among the three institutions, it may lead to delays in addressing human rights violations if an effective and efficient referral mechanism is not adopted. For the few respondents who had an understanding, they only deciphered from the names of the institutions.

The study also established that the review of the mandate of KNCHR and CAJ with a view to amalgamating them has not been done three years after the review became due.

#### **5.4 Challenges and opportunities for the Ombudsman in promoting the right to fair administrative action**

The study established that CAJ has opportunities for improvement based on positive appraisal of the respondents on their staff competencies and the complaints handling mechanisms they have put in place. Competent, dedicated, committed and friendly staff are proficiencies necessary for an institution tasked with protecting human rights. In the same breadth, efficient follow up mechanisms and feedback mechanisms are ideal institutional mechanisms to protect human rights.

On challenges faced by CAJ in addressing complaints on breaches of the right to fair administrative action, the study found that CAJ faced both internal and external challenges. Internal challenges manifested in delays within and failure by CAJ to take action on complaints although CAJ attributes the delay to unresponsiveness by public entities to their inquiries. Another internal challenge was high turnover of CAJ complaints handling officers, which hampered expeditious resolution of complaints. In addition to this was failure to standardize the efficiency of its services across its regional



offices as well as the Huduma Centre Desks and could be deduced from the fact that some citizens preferred to lodge complaints at the Head office even when there was a regional office or Huduma Centre in their county or region. The external challenges were characterized by unresponsiveness and failure by public entities to respond to CAJ's inquiries.

The question that follows this finding is whether CAJ has the power to act on unresponsive public entities? The findings of this study show that CAJ has powers to the extent of enabling it initiate inquiries, investigations and follow ups with public entities on complaints it receives. Once it has issued a finding and a recommendation on a complaint, a public entity is bound to comply with the finding and implement the decision unless the decision is challenged before a court of law. This is the current position as reinforced by the Court of Appeal in the recent case of *Commission on Administrative Justice vs. Kenya Vision 2030 Delivery Board & 2 others* (2019) eKLR.

Accordingly, the decisions of CAJ are self-enforcing unless they are challenged on judicial review. The powers of summons, interrogations, searches, citations, adjudication, and compelling production of documents as well as attendance of witnesses are all facilitative powers meant to enable CAJ initiate interventions towards protection of human rights. The research did not encounter any case where Parliament had considered CAJ's report on the failure by a public entity to enforce its recommendations.

## **5.5 Conclusion**

The study has established that CAJ plays a critical role in promoting the right to fair administrative action through its flexible complaints handling process. However, this is

hampered to some extent by its approaches, delays and firmed up by unresponsiveness by and disregard of its decisions and by public entities. Nevertheless, CAJ needs to utilize its facilitative powers and alternative dispute resolution approaches to redress violations of the right to fair administrative action.

## **5.6 Recommendations**

Through the findings of this study, the researcher made the following findings:

- CAJ should invest more on investigations into complaints as opposed to issuing letters of inquiries that lead to several reminders hence delaying the resolution of complaints. This will ensure exhaustive utilization of its facilitative powers to promote the right to fair administrative action.
- CAJ should ensure same standards are maintained in all its offices including at their Huduma Centre Desks to give the citizens confidence to lodge their complaints in the nearest office or Huduma Centre Desks.
- KNCHR, CAJ and NGEC need conduct more awareness creation initiatives to reach all regions of the country to enable the citizens acquire knowledge about their existence and their various mandates. This will enable citizens report violations to the appropriate institutions. The three institutions should also enhance collaborative efforts to strengthen referral of complaints.
- Awareness creation initiatives should be targeted to enable more females report violations of human rights.

- Parliament should undertake the review envisaged in Sections 55 of both CAJ and KNCHR Acts. Prior to the review, it should undertake an assessment to determine the viability of the two commissions as separate or as amalgamated with the whole objective of ensuring an effective means of human rights protection in the country.

### **5.7 Suggestion for Further Research**

There is need to conduct a study on the reasons why public entities disregard CAJ's inquiries and fail to comply with their recommendations. This will involve gathering the perspectives of public entities who have received inquiries and recommendations of CAJ.

## BIBLIOGRAPHY

- Access to Information Act No. 31 of 2016. Retrieved from <http://kenyalaw.org>.
- Anderson, K. D. (1987). *The Ombudsman as an Administrative Remedy*. International Ombudsman Institute. 41. Retrieved from [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Kent+D.+Anderson+1987+The+Ombudsman+as+an+Administrative+Remedy+IOI+OCCASIONAL+PAPER+&btnG](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Kent+D.+Anderson+1987+The+Ombudsman+as+an+Administrative+Remedy+IOI+OCCASIONAL+PAPER+&btnG)
- Anthony, G. (2015). *Administrative Justice in the United Kingdom*. Italian Journal of Public Law, 7(1), 9-33
- Bivins, T. (2006). *Responsibility and Accountability*. Retrieved from [https://pdfs.semanticscholar.org/0f68/1c22aa5e54c1f78d9c6de0f6948f4690e1c9.pdf?\\_ga=2.68663569.1076576521.1496321659-1164395532.1496321659](https://pdfs.semanticscholar.org/0f68/1c22aa5e54c1f78d9c6de0f6948f4690e1c9.pdf?_ga=2.68663569.1076576521.1496321659-1164395532.1496321659)
- Bösl, A and Diescho, J (2009). *Human Rights in Africa: Legal Perspectives on Their Protection and Promotion*. Macmillan Education Namibia
- Commission on Administrative Justice Act, No. 23 of 2011. Retrieved from <http://kenyalaw.org>.
- Commission on Administrative Justice Annual Report, 2012
- Commission on Administrative Justice Annual Report, 2013
- Commission on Administrative Justice (2013). *Repositioning the Ombudsman: Challenges and prospects for African Ombudsman Institutions*. Retrieved from [http://aoma.ukzn.ac.za/Libraries/External\\_reports/Kenya\\_Draft\\_Report\\_of\\_the\\_Regional\\_Colloquium\\_of\\_African\\_Ombudsmen.sflb.ashx](http://aoma.ukzn.ac.za/Libraries/External_reports/Kenya_Draft_Report_of_the_Regional_Colloquium_of_African_Ombudsmen.sflb.ashx)
- Commission on Administrative Justice Annual Report, 2014

Commission on Administrative Justice Annual Report, 2015

Commission on Administrative Justice Annual Report, 2016

Commission on Administrative Justice Annual Report, 2017

Commission on Administrative Justice Annual Report, 2018

Commission on Administrative Justice (2017). *'Laying Foundation for Administrative Justice in Kenya: Six Years Later'*.

Constitution of Kenya, 1963. Government Press, Nairobi

Constitution of Kenya 2010. Retrieved from <http://kenyalaw.org>.

De Graaf, K. J., Jans, J. H., Marseille, A. T., & De Ridder, J. (2007). *Administrative Decision-Making and Legal Quality: An Introduction*. *Quality of Decision-Making in Public Law*, 3-10

Fair Administrative Action Act No. 4 of 2015. Retrieved from <http://kenyalaw.org>

Gentles, S. J. et al. (2015). *Sampling in Qualitative Research: Insights from an Overview of the Methods Literature*. *The Qualitative Report*, 20(11), 1772-1789.

Hannum, H. (1998). *The UDHR in National and International Law*. *Health and Human rights*, 3. 2 144-158

Idike, C. (2004). *Deflectionism or Activism? The Kenya National Commission on Human Rights in Focus*. *Essex Human Rights Review*, 1(1), 40-53.

Kempe, R. H. (2013). *Tackling the corruption epidemic in Kenya: Toward a Policy of More Effective Control*. *Journal of Social, Political, and Economic Studies*, 38(3), 287

Kenya National Commission on Human Rights Act No 14 of 2011. Retrieved from <http://kenyalaw.org>.

- Kenya National Commission on Human Rights (2011). *Making the Bill of Rights Operational: Policy, Legal and Administrative Priorities and Considerations*. Occasional Report
- Mayrhofer, M., Aquilar, F., Azeriah, M., Bregaglio, R., Gunn, J., Harris, P. & Nkrumah, B. (2016). *International Human Rights Protection: The Role of National Human Rights Institutions - A Case Study*.  
[https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Monika+Mayrhofer+%26+Others%2C+2016+International+Human+Rights+Protection%3A+The+Role+of+National+Human+Rights+Institutions](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Monika+Mayrhofer+%26+Others%2C+2016+International+Human+Rights+Protection%3A+The+Role+of+National+Human+Rights+Institutions).
- National Gender and Equality Commission Act No. 15 of 2011. Retrieved from <http://kenyalaw.org>.
- Osakede, K. O., & Ijimakinwa, S. O. (2014). *The Role of Ombudsman as a Means of Citizen Redress in Nigeria*. *Review of Public Administration and Management*, 400(3615), 1-9.
- Oyugi, W., Wanyande, P., & Odhiambo M.C. (2003). *The Politics of Transition in Kenya: From KANU to NARC*. Heinrich Böll Stiftung
- Rowat D. (1997). *A Worldwide Survey of Ombudsmen*. *International Ombudsman Institute*. Occasional Paper, 60  
[http://www.theioi.org/downloads/22881/IOI%20Canada\\_Occasional%20paper%2069\\_M.%20Daniel%20Jacoby\\_The%20Development%20of%20the%20%22Ombudsmediator%22%20on%20a%20Global%20Scale\\_1999.pdf](http://www.theioi.org/downloads/22881/IOI%20Canada_Occasional%20paper%2069_M.%20Daniel%20Jacoby_The%20Development%20of%20the%20%22Ombudsmediator%22%20on%20a%20Global%20Scale_1999.pdf)
- Satyanand, J. A. (1999). *The Ombudsman Concept and Human Rights Protection*. International Ombudsman Institute. 68. Retrieved from

[https://scholar.google.com/scholar?cluster=1519796238756275095&hl=en&as\\_sdt=0,5](https://scholar.google.com/scholar?cluster=1519796238756275095&hl=en&as_sdt=0,5)

Segita, I. M. (2017). *The Future of Administrative Law in Kenya*. Kabarak Journal of Research & Innovation, 4(2), 84-92.

Sihanya, B. (2012). *Constitutional implementation in Kenya, 2010-2015: Challenges and Prospects*. Nairobi: Friedrich-Ebert-Stiftung.

Tigerstrom, V. B. (1998). *The Role of the Ombudsman in Protecting Economic, Social and Cultural Rights*. The International Ombudsman Yearbook, 2, 3-56.

United Nations. (2010). *National Human Rights Institutions: History Principles, Roles and Responsibilities*. Retrieved from

[https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf).

Wahi, N. (2006). *Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability*, 12 U.C. Davis J. International Law & Policy 331

Wandabusi E. A (n.d.). *Report on a Conference on State of Implementation of the Constitution since 2010 - Progress or Regress*: at <http://www.fes-kenya.org/media/publications/A%20Report%20on%20a%20Conference%20on%20State%20of%20Implementation%20of%20the%20Constitution%20since%202010%20-%20Progress%20or%20Regress.pdf>.

United Nations (1948). *Universal Declaration of Human Rights*, United Nations Publications

United Nations (1966). *International Covenant on Civil and Political Rights*, United Nations Publications

United Nations (1966). International Covenant on Economic, Social and Cultural Rights,

United Nations Publications

African Union (1981). African Charter on Human and Peoples Rights, African Union

Publication



## APPENDICES

### APPENDIX I: UNSTRUCTURED INTERVIEW GUIDE

#### Introduction

My name is Winnie Tallam, a student pursuing a Master's Degree in Human Rights at the University of Nairobi. I am conducting a study on the *Role of the Ombudsman in Promoting the Right to Fair Administrative Action in Kenya* and would like to ask you some questions about this topic.

#### Instructions

Please respond to the questions to the best of your knowledge. Kindly note that the information you provide will be kept with utmost confidence and will only be used for the purpose of this academic research. Your details as a respondent will not be disclosed.

#### PART I: Demographic and Background Information

1. Name: .....
2. Age bracket:     18-30 ( )     31-40 ( )     41-50 ( )     51-60 ( )  
                  61 & above ( )
3. Gender:   Male ( )     Female ( )
4. Marital status.....
5. County of residence.....
6. Tribe.....
7. Religion .....

8. Level of education:      0-8 years ( ) 9-13 years ( ) Other ( )
9. Please tell me how you learnt about the existence of CAJ?
- a) Through Radio                      ( )                                      b) Through TV                      ( )
- c) Through Newspaper      ( )                                      d) By referral                      ( )
- e) Other .....
10. When did you lodge your complaint with the CAJ?.....
11. How did you lodge your complaint?
- a) Visited the office                      ( )      b) Through email                      ( )
- c) Sent a letter by post                      ( )      d) Through a phone call                      ( )
- d) Through Huduma Centre                      ( )      e) Through a referral                      ( )
- f) Through other means. Explain.....

**PART II: Ways in which the Ombudsman promotes the right of fair administrative action in Kenya**

1. What was the nature of your complaint?  
.....
2. Kindly explain what action was taken by CAJ after you lodged your complaint?  
.....  
.....  
.....
3. (a) Did you make any follow-ups on your complaint? Yes ( ) No ( )
- (b) Please explain your answer above  
.....  
.....

(a) Was the office or officer ready to assist when you made the follow-ups? Yes ( )  
No ( )

(b) Please explain your answer above

.....  
.....

After how long was your complaint concluded?

.....  
.....

What was the outcome of your complaint?

.....  
.....

(a) Were you happy with the outcome? Yes ( ) No ( )

(b) Please explain your answer above

.....  
.....

4. Do you think there is something CAJ could have done better in addressing your complaint?.....  
.....

**5. PART III: The extent to which the convergence of KNCHR, CAJ and NGEC promote human rights in Kenya**

1. (a) Are you aware of other public institutions that would have handled your complaint? Yes ( ) No ( )

(b) Name them

.....  
.....

2. (a) Do you understand the work of KNCHR, CAJ and NGEC? Yes ( ) No ( )

(b) If Yes, Explain

.....  
.....

3. (a) Among KNCHR, CAJ or NGEC, which institution would you prefer to lodge your complaint with? KNCHR( ) CAJ ( ) NGEC ( )

(b) Explain your answer above.....

.....  
.....

**PART IV: Challenges and opportunities for the Ombudsman in promoting the right to fair administrative action**

1. What did you like about CAJ as they addressed your complaint?

.....  
.....

2. (a) Were there any challenges you encountered in the process of having your complaint addressed by CAJ? Yes ( ) No ( )

(b) Please explain your answer above

.....  
.....

3. Do you think CAJ has sufficient powers to address complaints against public entities?

Yes ( ) No ( )

4. (a) Would you consider going back to CAJ if you had a similar complaint? Yes ( )

No ( )

(b) Please explain your answer above

.....  
.....

5. What would you recommend to CAJ to adopt to improve its services when addressing complaints?

.....  
.....

**APPENDIX II: RESEARCH LICENSE**

**THIS IS TO CERTIFY THAT:  
MS. WINNIE JELAGAT TALLAM  
of UNIVERSITY OF NAIROBI, 34967-100  
Nairobi, has been permitted to conduct  
research in Nairobi County**

**Permit No : NACOSTI/P/19/19867/31496  
Date Of Issue : 25th July,2019  
Fee Received :Ksh 1000**

**on the topic: EXAMINING THE ROLE OF  
THE OMBUDSMAN IN PROMOTING THE  
RIGHT TO FAIR ADMINISTRATIVE ACTION  
IN KENYA**

**for the period ending:  
23rd July,2020**



.....  
**Applicant's  
Signature**

.....  
**Director General  
National Commission for Science,  
Technology & Innovation**

**THE SCIENCE, TECHNOLOGY AND  
INNOVATION ACT, 2013**

Grant of Research Licenses is guided by the Science,  
Technology and Innovation (Research Licensing) Regulations, 2014.

**CONDITIONS**

- 1. License is valid for the proposed research, location and specified period.
- 2. The License and any rights thereunder are non-transferable.
- 3. Licensee shall inform the County Governor before commencement of the research.
- 4. Excavation, filming and collection of specimens are subject to further necessary clearance from relevant Government Agencies.
- 5. License does not give authority to transfer research materials.
- 6. NACOSTI may monitor and evaluate the licensed research project.
- 7. Licensee shall submit one hard copy and upload a soft copy of their final report within one year of completion of the research.
- 8. NACOSTI reserves the right to modify the conditions of the license including cancellation without prior notice.

National Commission for Science, Technology and Innovation  
P.O. Box 30623 - 00100, Nairobi, Kenya  
TEL.: 020 400 7000, 0713 788787, 0735 404245  
Email: dg@nacosti.go.ke, registry@nacosti.go.ke  
Website: www.nacosti.go.ke



**REPUBLIC OF KENYA**



**National Commission for Science,  
Technology and Innovation**

**RESEARCH LICENSE**

**Serial No.A 25991**

**CONDITIONS: see back page**

# APPENDIX III: TURNITIN REPORT

Turnitin

16/09/2019, 17:05

### Turnitin Originality Report

Processed on: 16-Sep-2019 16:54 EAT  
 ID: 112715199  
 Word Count: 14887  
 Submitted: 1

**EXAMINING THE ROLE OF THE OMBUDSMAN IN PROMOT...** By Winnie Tallam 3

Document Viewer

<b>Similarity Index</b> <span style="font-size: 1.2em; font-weight: bold;">14%</span>	<b>Similarity by Source</b> Internet Sources: 10% Published: 2% Student Papers: 12%
--	--

[include myself](#)
[exclude myself](#)
[excluding matches < 3 words](#)
[download](#)
[refresh](#)
[print](#)

mode: [quickview](#) (classic) report [Change made](#)

Match	Score
1% match (student papers from 15-Sep-2017) Submitted to University of Cape Town on 2017-09-15	83
1% match (Internet from 09-Nov-2018) <a href="http://kenyalegal.org">http://kenyalegal.org</a>	81
<1% match (Internet from 06-Sep-2019) <a href="http://repositorio.unbl.ac.ke">http://repositorio.unbl.ac.ke</a>	80
<1% match (Internet from 19-Sep-2017) <a href="http://www.ombudsman.go.ke">http://www.ombudsman.go.ke</a>	78
<1% match (Internet from 20-Jun-2019) <a href="http://www.unwto.org">http://www.unwto.org</a>	78
<1% match (publications) Linda C. Bell, "The Ombudsman, Good Governance and the International Human Rights System", <i>Sciendo Nature</i> , 2005	78
<1% match (Internet from 20-Oct-2015) <a href="http://www.rhcc.org.za">http://www.rhcc.org.za</a>	71
<1% match (Internet from 15-Sep-2019) <a href="http://www.fishbase.org">http://www.fishbase.org</a>	69
<1% match (Internet from 29-Jan-2015) <a href="http://kenyalegal.org">http://kenyalegal.org</a>	66
<1% match (student papers from 16-Nov-2009) Submitted to University of Pretoria on 2009-11-15	61
<1% match (student papers from 17-Feb-2018) Submitted to Masamba University on 2018-02-17	60
<1% match (Internet from 21-Feb-2015) <a href="http://researchclub.org">http://researchclub.org</a>	59
<1% match (student papers from 28-Aug-2019) Submitted to Kisi University on 2019-08-28	58
<1% match (student papers from 26-Nov-2018) Submitted to Strathmore University on 2018-11-26	52
<1% match (student papers from 11-Nov-2019) Submitted to University of Cape Town on 2019-11-11	50
<1% match (student papers from 12-Jul-2018) Submitted to Wovvesa University on 2018-07-12	49
<1% match (Internet from 02-Jun-2019) <a href="http://www.benoitmayr.com">http://www.benoitmayr.com</a>	48
<1% match (Internet from 07-Mar-2019) <a href="http://www.fundacion.org.ve">http://www.fundacion.org.ve</a>	42
<1% match (Internet from 01-Aug-2012) <a href="http://www.ombudsman.go.ke">http://www.ombudsman.go.ke</a>	40
<1% match (student papers from 27-Aug-2018) Submitted to University of KwaZulu-Natal on 2018-08-27	39
<1% match (Internet from 19-Jun-2019) <a href="http://www.ku.ac.id">http://www.ku.ac.id</a>	38
<1% match (student papers from 19-May-2017) Submitted to Ghana Technology University College on 2017-05-19	36
<1% match (student papers from 31-Aug-2011)	31