

**THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS**

INFORMATION SHEET NO.3

**COMMUNICATION PROCEDURE
ORGANISATION OF AFRICAN UNITY**

Anyone may bring a complaint to the attention of the African Commission on Human and Peoples' Rights alleging that a State party to the African Charter on Human and Peoples' Rights has violated one or more of the rights contained therein. Individuals and NGOs in Africa and beyond have over the years seized the Commission with complaints of this nature. What kinds of communications does the Commission receive, and how does it deal with them?

This *Information sheet* explains the procedure followed by the Commission in considering communications submitted to it. This booklet deals extensively with the procedure relating to the consideration of "*Other Communications*" submitted pursuant to article 55 of the Charter. The procedure governing inter-state communications has been briefly explained since it has never been used by the Commission. It also covers issues such as the registration of communications, the procedures of *seizure*, *admissibility* and the consideration of the *merits of a case*.

An explanation of the conditions of admissibility, amicable settlement, evidence and burden of proof, the recommendations of the Commission and the Follow-up process also features in this information sheet.

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Introduction

One of the principal functions of the Commission is to protect the rights and freedoms guaranteed in the Charter under conditions laid down therein.

To achieve this, the Commission is empowered, among other things, to receive and consider:

- Communications submitted by one State claiming that another State party to the Charter has violated one or more of the provisions in the Charter (**articles 48-49**); and
- Other Communications from individuals and organisations alleging that a State party to the Charter has violated one or more of the rights guaranteed therein, (**article 55**).

Other communications submitted to the Commission pursuant to article 55 of the Charter are considered within the framework of a written procedure (see **Rules 102-120** of the Commission's Rules of Procedure). The author of a communication can withdraw his or her communication at any stage. The Commission in such a case will discontinue proceedings on it without taking any written decision. According to rule **111** of its Rules of Procedure, prior to forwarding its final decisions (recommendations) on a communication to the State party concerned, the Commission may inform that State whether it considers interim measures desirable to prevent irreparable damage to the victim.

Registration of Communications

Communications meant for the African Commission are usually directed to the Secretariat of the Commission which is based in Banjul, The Gambia. Once a communication is received, it is registered under a file number in the Commission's Official Register of Communications kept at the Secretariat of the Commission. The Secretariat acknowledges receipt of the author's letter of complaint. If more information is required, the author will be informed accordingly.

The number of the communication is written in a manner that reflects the total number of communications received by the Commission, and the year that particular communication was received. Thus, if a communication is numbered , **18/90**, "18" will stand for the 18th communication the Commission has received since its inception and "90" will stand for the year the 18th communication was received. It should be noted however that registration of a communication is no guarantee that it is going to be seized by the Commission.

Where the facts of the complaint reveal that the latter is not against a State party to the Charter, the complaint will not be registered and the author will be informed accordingly. The Secretariat will acknowledge receipt of the complaint by sending the author a standard letter enclosing any vital information about the functioning of the Commission including the text of the Charter.

Seizure

Once a communication has been registered, the Commission has to be seized with it. Article 55 of the Charter provides that "Before each session of the Commission, the Secretary of the Commission prepares a list of all communications submitted to the Secretariat, other than those of State parties ... and transmits them to the members of the Commission, who shall indicate which communications shall be considered by the Commission".

Rule 102 (2) of the Commission's Rules of Procedure provides further that "No communications concerning a State which is not a party to the Charter shall be received by the Commission or placed in a list ..."

Therefore, when the Secretariat of the Commission receives a communication pursuant to article 55 against a State party to the Charter, as soon as it is registered, a summary is made thereof and is distributed to all the commissioners. A letter is written to the complainant acknowledging receipt of the communication. No letter is sent to the State party concerned at this stage. The Secretariat has to wait for a response from at least seven of the eleven members to indicate that they have received the communication and approved seizure.

Alternatively, if the Secretariat does not receive minimum number of seven responses, the communication shall be presented to all the commissioners at the Commission's next session.

At this session, the Commission shall decide whether to be seized of the communication by determining whether it alleges any *prima facie* violation of the Charter, or whether it is properly submitted according to the provisions of article 55 of the Charter. Article 55 (2) of the Charter provides that "A communication shall be considered by the Commission if a simple majority of its members so decide."

If a simple majority of the commissioners (in this case six) decide that the Commission be seized, the Secretariat will then be requested to inform the parties (the complainant and the State concerned) that the communication shall be considered on admissibility at its next session, and that they should within a time limit of three months, from the date the letter was written, submit comments to that effect.

It is only at this stage that the state party is notified of the communication.

Conditions of admissibility of a communication

Article 56 of the Charter stipulates the admissibility criteria to be applied to individual and similar communications as follows:

- The communication should indicate the author(s) name even if the latter request anonymity¹. The person submitting the complaint must, as a matter of principle, indicate his or her name.

If the person wishes to remain anonymous, he or she should say so and the communication will be given a letter of the alphabet, say **B**. It will henceforth be addressed a **B v the State party** concerned. The author need not give reasons for wanting to be anonymous. If the author is an NGO, the names of the representatives of the NGO would be required. The name and address also make correspondence between the author and the Commission easier. If there is no name or address on the complaint, it will not be considered.

- The communication should be compatible with the Charter of the OAU or with the present Charter². The Communication should invoke the provisions of the African Charter alleged to have been violated and/or the principles enshrined in the OAU Charter.

A communication which does not illustrate a *prima facie* violation of the Banjul Charter or some of the basic principles of the OAU Charter, such as "freedom, equality, justice and dignity", will not be examined.

- The communication should not be written in disparaging or insulting language directed against the State concerned and its institutions³ or to the OAU.

The author should state the facts of his or her case without insulting anyone. Political rhetoric and vulgar language is not necessary. Insulting language will render a communication inadmissible, irrespective of the seriousness of the complaint.

- The communication is not based exclusively on news disseminated through the mass media.⁴ The author must be able to investigate and ascertain the truth of the facts before requesting for the Commission's intervention.
- The communication is sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.⁵

¹ On all but one of the communications submitted to the Commission so far, none of the complainants have requested for anonymity

² See Communication 57/91 and 1/88, where failure to prove a *prima facie* violation renders the communication inadmissible; an allegation in a general manner is not enough, see Communication 63/92.

³ See Communication 65/92 where the communication was declared inadmissible for using words such as 'regime of tortures' and 'a government of barbarism'.

⁴ In communications 147/95 and 149/96, the government alleged that the communication should be declared inadmissible because it was based exclusively on news disseminated through the mass media. The Commission however declared the communication admissible.

⁵ See communications 43/90 and 45/90 where non exhaustion of local remedies rendered communication inadmissible; but see communication 59/91 where communication was declared admissible where appeal has been

The author must have taken the matter to all the available domestic legal remedies. That is, he or she must have taken the case to the highest court of the land.

However, if such remedies are not available, or if they are available but the procedure is unduly prolonged, for example, say by numerous and unnecessary adjournments, the complainant can submit the complaint to the Commission.

- The communication should be submitted to the Commission within a reasonable period from the time local remedies are exhausted. After the exhaustion of local remedies, or where the complainant realises that such remedies shall be unduly prolonged, he or she can submit the complaint to the Commission immediately. The Charter does not give a time limit but talks of reasonable time. It is always advisable to submit a complaint as early as possible.
- The communication does not deal with cases which have been settled in accordance with the principles of the Charter of the UN⁶ or the Charter of the OAU or the provisions of the present Charter.

pending before the courts for twelve years. This was considered to be unduly prolonged. Communication can also be declared admissible without the exhaustion of local remedy if the remedy is at the discretion of the executive or if the jurisdiction of the ordinary courts have been ousted by a decree or through the establishment of a special tribunal, see in this regard communications: 60/91, 64/92, 68/92 and 78/92.

⁶ See communication 15/88 where the UN Human Rights Committee had decided the case in favour of the victim and he submitted the same communication to the Commission. It was declared inadmissible. However, the submission of a complaint to an NGO or an Inter - Governmental Organisation such as the EEC does not render a communication inadmissible, communication-59/91; but a communication already being examined under rule 1503 of the UN does, communication 69/92. 'The purpose is to avoid usurpation of the jurisdiction of the bodies who may provide a solution or relevant information'.

The communication must not be one which has already been, or is being settled through another international body, like the UN Human rights Committee, or even some organ of the OAU.

Admissibility of a Communication

Once a communication has been seized by the Commission, a decision has to be taken concerning its admissibility. Article 56 of the Charter sets out seven conditions to be met for a communication received pursuant to article 55 to be considered. Admissibility of a communication is therefore the determination by the Commission to see whether these conditions have been met.

As a matter of principle, all the conditions must be met for a communication to be declared admissible. Otherwise, if one has not been met, the communication will be declared inadmissible and the case closed.

This decision on admissibility can only be taken after the text of the communication or a summary thereof has been transmitted to the State party concerned and it has been given the opportunity to make its observations.

The State party and the author of the communication are given time limits of three months, within which to submit their comments.

After studying the arguments presented by both parties, and bearing in mind the principles of international human rights law, which is basically aimed at protecting the individuals from State's encroachment, the Commission may then make a decision.

When a decision on admissibility is taken on a communication, this is transmitted to both the complainant and the State concerned. In principle, a decision on admissibility is final. For instance, if a communication is declared inadmissible, the reasons for inadmissibility shall be indicated and this will automatically bring consideration of the communication to an end. However, a communication declared inadmissible could be reviewed at a later date if the complainant can provide information to the effect that the grounds for inadmissibility no longer exist.

On the other hand, if the communication is declared admissible, the parties will be informed and requested to send their observations on the merits.

Amicable resolution

Once a communication has been declared admissible, the Commission puts itself at the disposal of the parties in a bid to secure a *friendly settlement* of the dispute. The Commission offers its *Good Offices* for friendly settlement at any stage of the proceedings. If both parties express willingness to settle the matter amicably, the Commission will appoint a rapporteur, usually the Commissioner who has been handling the case, or a Commissioner responsible for promotional activities in the State concerned or a group of commissioners.

If a friendly settlement is reached, a report containing the terms of the settlement is presented to the Commission at its session. This will automatically bring consideration of the case to an end. On the other hand, if no agreement is reached, a report is submitted to the Commission accordingly by the commissioner(s) concerned and the Commission will take a decision on the merits of the case.

Evidence and Burden of Proof

For the purpose of *seizure* and *admissibility*, the author of the communication can confine himself or herself to presenting a *prima facie* case and satisfying the conditions laid down in article 56 of the Charter. The author should also make precise allegations of facts by attaching relevant documents, if possible, and avoid making allegations in general terms.

Likewise, a rejection of the allegations by a State is not enough. The State party must submit specific responses and evidence refuting the allegations.

Consideration on the Merits

Once a communication has been declared admissible, the Commission will proceed to consider the substantive issues of the case. That is to say, to examine the allegations

made by the complainant and the response of the State concerned with due regard to the provisions of the Charter and other international human rights norms.

The Secretariat of the Commission prepares a draft decision on the merits taking into account all the facts at its disposal. This is meant to guide the Commissioners in their deliberations. The parties are notified of the final decision taken by the Commission.

During the session, the parties are liberty to make written or oral presentations to the Commission. Some States send representatives to the Commission's sessions to refute allegations made against them. NGOs and individuals are also granted audience to make oral presentations before the Commission. The Commission puts complainants and the States which are alleged to have violated human and/or people's rights on an equal footing throughout the proceedings.

Decision on the merits is an application of the international human rights law and an interpretation of the Charter vis-à-vis the allegations alleged by the victim. It is an examination of these allegations and all the arguments submitted by the parties within the context of the African Charter in particular, and international human rights law in general.

There are usually instances where a State completely ignores to respond to the allegations made by the complainant, thus refusing to cooperate with the Commission. In such a situation, the Commission has no choice but to rely on the facts at its disposal for its final decision.

However, the fact that the complainant's allegations were not contested, or were partially contested by the State does not mean that the Commission will accept their veracity. The Commission can invoke the powers invested in it under article 46 to "resort to any appropriate method of investigation" To examine such claims *ex officio*, it can get information from alternative sources and from third parties.

After a careful study of the facts and the arguments put forward by both sides, the Commission may then decide whether there has been a violation of the Charter or not. If it finds a violation, it makes recommendations to the State party concerned.

Recommendations (or Decisions) of the Commission

The Commission's final decisions are called recommendations. The recommendations are made after consideration of the facts submitted by the author, his or her complaint, the State party's observations (if any) and the issues and proceedings before the Commission.

These proceedings usually contain the decision on admissibility, an interpretation of the provisions of the Charter invoked by the author, an answer to the question whether the facts as presented disclose a violation of the Charter, and if a violation is found, the required action to be taken by the State party to remedy the violation.

The mandate of the Commission is quasi-judicial and as such, its final recommendations are not in themselves legally binding on the States concerned.

These recommendations are included in the Commissioner's Annual Activity Reports which are submitted to the OAU Assembly of Heads of State and Government in conformity with article 54 of the Charter. If they are adopted, they become binding on the States parties and are published.

Follow-up on the Commission's recommendations

The Commission has not laid down procedure to supervise the implementation of its recommendations. However, the Secretariat does send letters of reminders to States that have been found to have violated provisions of the Charter calling upon them to honour their obligations under article 1 of the Charter "... to recognise the rights, duties and freedoms enshrined in this Charter and ... adopt legislative and other measures to give effect to them". The first letters are sent immediately after the adoption of the Commission's Annual Activity Report by the OAU Assembly of Heads of State and Government and subsequent letters are sent as often as necessary.

The major problem however is that of enforcement. There is no mechanism that can compel States to abide by these recommendations. Much remains on the good will of the States.

Procedure for inter-state communications

The submission of communications to the Commission by State parties to the Charter alleging that another State party has violated the provisions of the Charter is governed by two procedures spelt out in articles 48-53 of the African Charter and Rules 93 to 101 of the Commission's Rules of Procedure.

The first procedure contained in article 48 mandates the Commission to receive and consider a communication from a State only after the State has tried to settle the dispute with the other State and failed. If after three months the dispute is not settled, either State can submit the communication to the Commission through the Chairman, and notify the other State.

The second procedure allows a State which does not want to enter into bilateral negotiation with the accused State to refer a matter of human rights violations directly to the Commission, by addressing a communication to the Chairman of the Commission, the OAU Secretary General and the other State concerned.

Unlike the procedure with regards to 'other communications', under these two procedures, the Charter requires the Communication to be addressed specifically to the Chairman of the Commission, and also obliges the complaining State to notify the other State itself, instead of the Commission doing so.

Under both procedures, the Commission can proceed to consider a communication only after it has ascertained that all local remedies have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

The Commission may, if it deems it necessary, ask States to provide it with all the relevant information; and when it is considering the matter, it may invite States to make oral or written presentations. The primary goal of the Commission in either procedure is to secure a friendly settlement.

However, after having tried all appropriate means to reach an amicable solution based on the respect for human and people's rights, the Commission shall prepare a report within a reasonable period of time, to the States concerned and communicate the report to the OAU Assembly. In its report to the Assembly, the Commission can indicate such recommendations as it deems useful.

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