

**A Simplified Guide For
NGOs, Individuals and Litigants
On How to File
Communications to the African
Commission on
Human and People's Rights**

Volume One

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1. INTRODUCTION

The African Commission on Human and People's Rights (hereinafter the African Commission/the Commission), is the first and the most famous African human rights institution. It was established under Article 30 of the African Charter on Human and People's Rights of 1981(hereinafter the African Charter/the Charter/ Banjul Charter), to protect and promote human and people's rights in Africa. Therefore, the Commission has Mandate to Promote and Protect those rights in Africa. This mandate is further elaborated under Article 45 of the ACHPR. ¹

For the ACHPR to achieve this broad objective of promoting and protecting human and people's rights in Africa, the Commission under Articles 55 and 56 is empowered to receive and consider communications from States, Individuals and organizations.

This guide aims to provide a simple understanding on how Non-Governmental Organizations (NGOs), Individuals and lawyers, can file communications to the African Commission. Relevant materials and information for this guide have been collected from African Commission's documents,² Rules of Procedures of 2010,³The African Charter on Human and People's Rights and information sheets.⁴ Read this guide along with Rules of Procedures because all the proceedings and activities of the Commission are regulated by these rules.

2. WHO CAN FILE COMMUNICATIONS BEFORE ACHPR?

The first question to deliberate is who can file a complaint to the ACHPR? The answer is; anyone can file a complaint or communication to the attention of the African Commission as provided under Article 55 of the Charter. Victims of human rights violations or NGOs can bring communications to the African Commission provided that; all local remedies have been exhausted. Those individuals who cannot make it on their own can be represented by lawyers or NGOs.

¹ African Charter on Human and Peoples' Rights, Article 45 (1) & (2)

² African Commission on Human and Peoples' Rights, Information Sheet No. 1,2&3 Communication Procedure; see also Institute for Human Rights and Development in Africa/International Service for Human Rights: A Human Rights Defenders' Guide to the African Commission, 2012.

³ Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010. Adopted by the African Commission on Human and Peoples' Rights during its 47th ordinary session held in Banjul, The Gambia from 12 to 26 May, 2010.

⁴ This Information Sheet is published by the Secretariat of the African Commission on human and Peoples' Rights: Its purpose is to inform people or groups of people, and states parties to the African Charter on human and Peoples' Rights on how they can denounce alleged violations of human and peoples' rights within the African human rights protection system. It covers such matters as the rights and freedoms protected in the Charter, conditions for submitting communications, emergency communications, who can submit a communication, how many violations per communication, legal representation and a standard format for the submission of communications.

A complaint cannot be submitted anonymously. It needs to include name and address of the complainant and has to be signed. However, a complainant can request to remain anonymous. There is no requirement for observer status, NGOs, to file a communication to ACHPR.

3. TO WHICH STATES ARE THESE COMMUNICATIONS APPLICABLE?

A communication can only be brought against a State that has ratified the African Charter and a member of the African Union. Currently 54 States in Africa, except South Sudan and Morocco, are answerable and bound by decisions from ACHPR.⁵

4. WHAT ARE THE TYPES OF COMMUNICATIONS TO BE FILLED?

Only complaints on human rights violations related to the African Charter can be communicated to the Commission. The complainant has to indicate which provision(s) of the charter have been breached by States. Understanding the rights and freedoms guaranteed in the Charter is particularly important for the submission of a communication. This is because for any communication to be considered by the Commission, it must in one way or another, demonstrate that the State has violated one or some of the rights in the Charter.

5. IS THERE A NEED FOR LEGAL REPRESENTATION?

Principally, there is no requirement for legal representation at the African Commission, because this is quasi-judicial organ. The communications are also simple and less technical since the preparation, submission and processing of a communication is a relatively straightforward procedure.

Under this observation, it is pretty clear that a complainant can act on his or her own capacity without the need for professional legal assistance. Nonetheless, the Commission prefers complainants to always seek the help of a lawyer. A lawyer would understand the technical aspects better and would therefore be able to advise, recommend and help to interpret the rights alleged to have been violated before the commission in Banjul.⁶

6. WHEN TO SUBMIT COMMUNICATIONS?

A complaint should be submitted to the African 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 African Commission immediately. The African Charter does not give a time

⁵ An overview of the status of ratification of the African Charter is available at <http://www.achpr.org/instruments/achpr/ratification/>.

⁶ Article 104 of the Rules of Procedure of the Commission states that the Commission may, either at the request of the author of the communication or at its own initiative, facilitate access to free legal aid to the author in connection with the representation of the case.

limit but talks of reasonable time. It is therefore always advisable to submit a complaint as early as possible.

7. REQUIRED DOCUMENTS AND DRAFTING

No legal formal documents like complaints, affidavits and petitions are required in the African Commission. The communication procedure of the African Commission is up-front, and does not require legal documents. A complaint can be brought by the victim of alleged human rights violations, or by another person acting on his or her behalf, or any group of people, including NGOs.

A NORMAL COMMUNICATION

A communication can be in any form provided that it meets the following requirements for it to be admissible;

- a) The name, nationality, and signature of the person or persons filing it, or in the case of NGOs the name(s) and signature(s) of the legal representatives;
- b) Whether the complainant wishes his or her identity to be withheld from the State concerned;
- c) An address for correspondence, possibly including fax and/or email;
- d) A detailed description of the alleged human rights violations, specifying date, place, and nature of the alleged violations;
- e) The name(s) of the State(s) alleged to have violated the African Charter;
- f) Any steps taken to exhaust domestic remedies, or an explanation why an exhaustion of domestic remedies would be unduly prolonged or ineffective;
- g) An indication that the complaint has not been submitted to another international settlement proceeding.

REQUIREMENT FOR EMERGENCY PROCEDURES

A communication should indicate if the victim's life, personal integrity or health is in imminent danger. In such an emergency, the African Commission has the power to adopt provisional measures, urging the State concerned not to take any action that will cause irreparable damage to the victim until the case has been heard by the African Commission. The African Commission can also adopt other urgent measures as it sees fit.⁷

Sample format for the Submission of Communications

There is no specific format for the submission of communications to the Commission, but the following simplified guidelines by ACHPR will make it much easier for would-be complainants to submit their communications.

⁷ Infosheet No 2 of the African Commission includes guidelines for the submission of communications (see http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf).

1. **Complainant** (s) (please indicate whether you are acting on your behalf or on behalf of someone else. Also indicate in your communication whether you are an NGO and whether you wish to remain anonymous).

Name

Age

Nationality

Occupation and/or Profession

Address

Telephone/Fax no

2. **Government accused of the Violation**

3. **Facts constituting the alleged violation** (Explain in as much factual details as possible on what happened; specifying place, time and dates of the violation).

4. **Urgency of the case** (Is it a case which could result in loss of life/lives or serious bodily harm if not addressed immediately? State the nature of the case and why you think it deserves immediate action from the Commission).

5. **Provisions of the Charter alleged to have been violated** (if you are unsure of the specific articles, please do not mention any).

6. **Names and titles of government authorities who committed the violation.** (if it is a government institution, please give the name of the institution as well as that of the head).

7. **Witness to the violation** (include addresses and if possible telephone numbers of witnesses).

8. **Documentary proofs of the violation** (attach for example, letters, legal documents, photos, autopsies, tape recordings etc., to show proof of the violation).

9. **Domestic legal remedies pursued** (Also indicate for example, the courts you have been to, attach copies of court judgments, writs of habeas corpus etc).

10. **Other International Avenue** (Please state whether the case has already been decided or is being heard by some other international human rights body; specify this body and indicate the stage at which the case has reached).

End

8. REGISTRATION OF COMMUNICATIONS

Once a communication has been submitted to the Secretariat of the African Commission, it will be registered, and the Secretariat will acknowledge receipt of the communication. Communications meant for the ACHPR, are usually sent to Banjul, The Gambia where the Secretariat of ACHPR is located. After receiving communications, the Secretariat will register them and ask for more information, if needed, before numbering and filing.

9. PROCEEDINGS AFTER REGISTRATION

After registration of communication, the Commission under Article 56 of the Banjul Charter will go through the following stages to determine the matter at hand;⁸

(A) SEIZURE

As a first step, the African Commission has to be “seized” by the communication, which means it decides to deal with it, at the latest during the first session following receipt of the communication. After the African Commission has been seized by a communication, the complainant and the State party are informed, and have three months to comment on the communication and on its admissibility. During Seizure, the following things are taken into consideration;

- Must be a complaint against a State party to the African Charter
- Must contain information which reveals a prima facie violation of the Charter
- It must be signed but the complainant can request anonymity
- The Commission decides whether to be seized of the matter then informs the state and applicant
- Provisional Measures to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands

(B) ADMISSIBILITY OF A COMMUNICATION

Article 56 of the African Charter points out criteria to be considered before admitting any communication. Therefore, before any communication is declared admissible by the Commission, it must comply with all these requirements:⁹

- I. Communications must indicate their author(s). If the complainant prefers anonymity then he or she must ensure that the complaint letter bears the name as it is a matter of principle. Name and Address are very important for consideration.
- II. Communication must be compatible with the AU Constitutive Act and the African Charter. The Complainant has to indicate clearly every provisions of the charter violated by States. Failure to reveal the provision in dispute will attract communication dismissal.
- III. Communication must not be written in disparaging or insulting language. Abusive and vulgar language will render communication inadmissible.
- IV. A Communication must not be based exclusively on media report.

⁸ Section 4 of the Rules of Procedure , Rules 91 up to 113.

⁹ Rule 105 of the Rules of Procedure; Article 56 of the African Charter)

- V. Domestic remedies must have been exhausted unless the domestic procedure is unduly prolonged.
- VI. Communications must be submitted within a reasonable time after exhausting local remedies.
- VII. The issues raised in the communication must not have been settled under other United Nations (UN) or African Union (AU) procedures.

(C) DECISION ON ADMISSIBILITY OF A COMMUNICATION

At the next session of the African Commission, a decision will be taken as to the admissibility of the complaint. Applicants will be given 60 days to provide arguments on admissibility. States will be given 60 days to respond on admissibility. The applicant will be given 30 days to counter-respond to the State's responses on admissibility.

After a complaint has been declared admissible, the African Commission will either seek to obtain a friendly settlement, or decide on the merits of the case. If a friendly settlement is reached, a report containing the terms of the settlement is presented to the African Commission at its session. This will automatically bring consideration of the case to an end.

(D) CONSIDERATION ON THE MERITS

In case there is no friendly settlement, after declaring a communication admissible the Secretariat of the African Commission will meet for deliberations on the merits, taking into account all the facts at its disposal. During the session of the African Commission, the parties are at liberty to make written or oral presentations. Some States send representatives to the African Commission's sessions to refute allegations made against them. NGOs and individuals are also granted audience to make oral presentations.¹⁰

Finally, the African Commission will decide whether there has been a violation of the African Charter or not. If it finds a violation of the Charter, it will make recommendations to the State concerned. Besides a decision on the merits, the African Commission is also available to achievement of friendly settlement of the case.

(E) 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.¹¹

¹⁰ Rules 111 of the Rules of Procedures. To prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands, the African Commission may request from the State concerned, to take provisional measures before a decision on the merits of the complaint.

¹¹ <https://www.achpr.org/communicationsprocedure>

(D) REMEDIES

If a violation is found, the recommendations of the African Commission will include the required action to be taken by the State party to remedy the violation. The mandate of the African Commission is quasi-judicial and as such, its final recommendations are not in themselves legally binding on the States concerned.¹² However one of the remedies may include compensation to the victim(s) of human rights violations and measures to prevent a recurrence.

All measures taken by the African Commission remain confidential, unless the Assembly decides otherwise. However, a report will be published following the adoption by the Assembly.

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¹² These recommendations are included in the Commissioner's Annual Activity Reports which are submitted to the AU 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.