

Information note #9

The communications procedure of the African Commission



Himba woman with her son, northern Namibia, August 2009. Photo: Thoron, Dreamstime.com.

What are the steps required to submit a communication (complaint) to the African Commission?

One of the key protection functions of the African Commission on Human and Peoples' Rights (the African Commission or the Commission) is to examine communications (complaints) from individuals, groups of individuals, or NGOs which allege one or more violations of their rights or the rights of others.

This communications procedure is set out in Article 55 of the African Charter on Human and Peoples' Rights (the African Charter). It represents a valuable means by which indigenous women, NGOs and other interested parties can seek reparation when the rights guaranteed to them by the African system have been violated.

This information note presents an overview of the key steps in the communications procedure for individuals, groups of individuals, and NGOs. Further information can be obtained by consulting the Rules of Procedure of the African Commission on Human and Peoples' Rights (ROP), which should be available on the African Commission's website shortly.

Who can submit a complaint?

- An individual
- A group of individuals
- An NGO

The author (person submitting the complaint) need not necessarily reside in the State against which the complaint is made.

Against whom can a complaint be made?

A complaint submitted in accordance with the African Charter may only target a State which has ratified the Charter (all African States, except Morocco, have ratified the Charter).

A complaint in accordance with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Women's Protocol or the Protocol) may only refer to a State which has ratified this instrument. A list of States which have ratified the Protocol on the Rights of Women in Africa is available at: <http://www.achpr.org/english/ratifications/>.

What can a complaint be about?

The complaint must include allegations of violations of rights set out in the African Charter and/or the Women's Protocol. The violations must be attributable to the State which is the subject of the complaint.

Individuals, women, and indigenous peoples, together with NGOs, may also refer the matter to the Commission if they believe that "a series of serious or massive violations" of human and peoples' rights have been committed by a State party to the Charter (Article 58, African Charter). In the case of this type of allegation, the Commission may waive the requirement to ensure that all domestic remedies have been exhausted (see below).

Referring a submission to the Commission

The Commission makes its decision on whether it will be seized of the submission (i.e. whether it will take up the case) after it has received and examined the written arguments, in other words, the facts and human rights violations alleged by the complainants. This is the stage at which the Commission decides whether or not to be seized with the communication/complaint. Effectively, the Commission verifies that it is competent to examine the complaint. At this stage, therefore, the Commission does not decide whether the matters reported consist in human rights violations; it simply determines whether (or not) the communication falls within its jurisdiction.

In order for the Commission to accept the communication for consideration, the latter must include the following (as set out under Article 93, ROP):

1. Name, nationality and signature of the person(s) submitting the communication; where the author of the communication is a non-governmental organisation, the name and signature of its legal representative(s);
2. An indication of whether or not the author wishes his/her identity to be disclosed to the State;
3. The address at which the Commission should communicate with the author and, if available, a telephone number, fax number and email address;

4. An account of the situation or alleged violations, including place, date and nature of the alleged violations;
5. If possible, the name of the victim, where this is different from that of the author;
6. All public authorities that are aware of the alleged event or situation;
7. Name of the State(s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the article(s) of the Charter pertaining to the alleged violation;
8. Details relating to compliance with the time period allocated under the African Charter for the submission of communications;
9. Any steps taken to exhaust domestic remedies or, if the author alleges the impossibility or the unavailability of domestic remedies, the grounds in support of such allegations;
10. A declaration that the complaint has not been submitted to any other international settlement proceeding in accordance with Article 56(7) of the African Charter.

The decision to take up the case is made by a simple majority of the members of the Commission present at the Session.

When the Commission decides to take up a communication, it advises the State against which the allegation has been made, and the author. The latter is invited to present arguments and evidence for the admissibility of the communication within a two-month deadline (Article 105, ROP).

The admissibility of the communication is then considered at the Commission's next session.

Admissibility

Article 56 of the African Charter defines the admissibility criteria of a communication. To be admissible, a communication:

1. Must give the identity of the author even if the latter asks the Commission for anonymity

The author of the communication is not necessarily the victim of the alleged violation(s). In the case of communications submitted in the name of a victim, the latter should, in principle, have given his/her consent prior to the communication being filed. However, there are circumstances in which it may be difficult to obtain the victim's consent, especially when the victim is afraid of bringing proceedings against the State in question or when the communication is submitted in the name of several victims and it is impossible to obtain the consent of each one. In these circumstances, consent of the victim(s) is not required.

2. Must be compatible with the Charter of the Organisation of African Unity or with the African Charter

The communication must cite violation(s) of rights guaranteed by the African Charter and/or the Women's Protocol. The communication must not consist of general or vague statements which have no genuine link to the rights guaranteed by the said instruments.

3. Must not contain disparaging or insulting terms in reference to the State which is the subject of the communication, its institutions or the OAU.

In some cases, communications have been declared inadmissible due to language considered inappropriate. Simple, clear, concise language is recommended.

4. Must not be based entirely on news disseminated through the mass media

The author of the communication should be in a position to demonstrate that the allegations are well-founded. The author must be able to supply items of evidence which should be appended to the communication; these include affidavits, witness statements, expert reports and judgements at domestic level.

5. Must be submitted after exhausting domestic remedies, if there are any, unless it is obvious that this procedure is unduly prolonged

What are "domestic remedies"? Domestic remedies are legal remedies established at national level in order to guarantee effective resolution of disputes.

What does "exhausting domestic remedies" mean? This means that before submitting a communication to the African Commission, the author has to have used all available legal routes at the domestic level.

In practice, domestic remedies must be:

1. Available: the author must have unimpeded access to domestic remedies
2. Effective: remedies must offer a possibility of success
3. Sufficient: remedies must be able to offer reparation for the alleged violation(s).

In cases where the Commission believes that domestic remedies are not available, effective or sufficient, it can waive the condition requiring the exhaustion of domestic remedies and declare the communication admissible. Furthermore, exhausting domestic remedies will not be required in the event that: domestic procedures can be shown to be "unduly prolonged"; for fear of reprisal the author resides outside the State which is the subject of the complaint; the State in question is incapable of bringing proceedings against the perpetrator of the violations; and in cases of serious or massive violations.

6. *Must be submitted within a reasonable period from the time that domestic remedies are exhausted or from the date the Commission is seized of the matter.*

The communication must be submitted to the African Commission soon after domestic remedies have been exhausted. The African Charter does not give any indication of what is meant by "reasonable period". However, it is highly advisable to submit the communication as soon as possible.

7. *Must not concern cases which have been settled according to either the principles of the Charter of the United Nations or the Charter of the Organisation of African Unity or the provisions of the African Charter.*

It must be the first time that the communication in question is examined by a regional or international body.

Decision on admissibility

Where the conditions of Article 56 of the African Charter are not met, the communication is declared inadmissible and the parties concerned are informed. This means that the Commission will not examine the substance of the communication. The author of the communication can, however, submit a written request to the Commission for the decision to be reconsidered at a later date on the basis of new elements (Article 107, ROP).

In cases where all the conditions are met, the communication is declared admissible and the parties concerned are informed (Article 107, ROP). This declaration of admissibility does not mean that the State in question has violated the rights alleged in the communication, but rather that the Commission will examine the merits of the communication.

The Commission grants the author sixty (60) days to present his/her observations on the substance of the communication. These observations are then sent to the State concerned which must present its statement of defence within sixty (60) days (Article 108, ROP).

The communication is referred to the following session for detailed examination.

Amicable settlement (Article 109, ROP)

Once a communication has been judged admissible, at any stage of the proceedings the Commission may offer its good offices for an amicable settlement between the parties. The procedure begins once the parties involved have given their consent. The Commission may entrust the task of facilitating negotiations between the parties to one or more of its members.

If the parties reach an amicable settlement, a report containing the conditions of the settlement is presented to the Commission and this brings the examination of the communication to a close.

Where the parties involved are not able to reach an amicable settlement, the Commission must continue to examine the communication.

Provisional measures

It is important to note that, at each stage of the communication, and before taking a decision on its merits, the Commission may, of its own initiative or at the request of one of the parties to the communication, as soon as the situation demands, recommend provisional measures to be adopted by the State concerned in order to avoid irreparable damage to the victim(s) of the alleged violation (Article 98, ROP).

Decision on the merits of the communication

After having considered the arguments of the parties involved, the Commission delivers its decision. Deliberations take place in private and all aspects of the discussions remain confidential (Article 110, ROP).

Are the decisions of the Commission binding on States found at fault?

Decisions of the African Commission are recommendations to the State concerned. The Commission is not a tribunal with judicial powers and has no power to enforce its decisions. In other words, a State cannot be forced to comply with a decision of the Commission. Generally, the implementation of African regional law is undertaken by States themselves, under the Commission's guidance. Nonetheless, the decisions of the African Commission represent official interpretations of the African Charter and form part of its jurisprudence. State parties to the African Charter have undertaken to respect and implement its decisions. In this sense, they have the obligation to implement the decisions and other legal norms developed by the African Commission.

Review of the decision

Once the Commission has issued a decision on the merits, it can, either of its own accord or at the written request of one of the parties, review its decision, particularly when new information comes to light. Requests for review may only be made within a period of three years from the date of the decision (Article 111, ROP).

Monitoring the implementation of decisions

The monitoring procedure for the implementation of decisions is described in Article 112 of the Commission's Rules of Procedure. According to this procedure, States against which decisions have been issued must report to the Commission on the measures they have taken in response to the decisions.

A follow-up report on the implementation of the Commission's recommendations is generally presented at each ordinary session of the Commission. Despite this monitoring mechanism, the fact remains that the Commission has no power to oblige States at fault to comply with its decisions.

DIAGRAM OF THE ACHPR COMMUNICATIONS/COMPLAINTS PROCEDURE

