

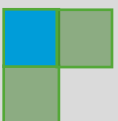
Filing a Communication before the African Commission on Human and Peoples' Rights



A complainant's manual



2013



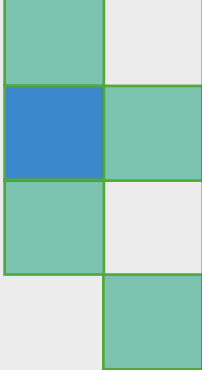


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Background

The idea for this 'Complainant's Manual' was born in Banjul, The Gambia, during the 51st Ordinary Session of the African Commission on Human and Peoples' Rights ('African Commission' or 'the Commission'). A group of civil society organisations working (also) as litigants before the African Commission formed the 'Group of litigants for Strengthening the Protective Mandate of the African Commission' ('Litigants' Group') to discuss and exchange on current challenges and experiences made in litigating before the African Commission. As the most accessible human rights mechanism on the continent for victims of human rights violations, the Commission is the main forum for upholding the rights of victims and it has rendered important decisions over the past 25 years,

However, litigants identified a number of challenges that have- and to some extent continue to- prevent the Commission from playing a more meaningful role in protecting human rights on the continent through the communication procedure. Aside from practical, institutional and legal challenges, there appears to be a general lack of awareness of the Commission's protective mandate, which is also reflected by the overall low number of cases that the Commission has dealt with to date, particularly in light of the scale of the human rights violations committed on the continent, and as compared to other regional mechanisms.

One reason for the relatively low number of cases might be the lack of awareness among victims, as well as lawyers and civil society organisations working with victims, about the Commission's protective mandate, and the procedure in which this mandate can be directly invoked by victims, organisations and others. This manual is designed to address this shortcoming, and to explain and clarify the basic procedural steps to follow when submitting complaints ('communications') to the African Commission. The manual is therefore only intended to familiarize those without any litigation experience before the Commission with the Commission's communication process. It is not intended to be exhaustive, and may contain errors. None of the organisations involved in the publication of this manual are liable for any use that may be made of the information contained therein.

The Egyptian Initiative for Personal Rights took the lead in drafting this manual, with input from other organisations of the Litigants' Group. For further information on this Manual please contact Yasmine Shash, Legal Researcher at the Egyptian Initiative for Personal Rights at Yasmine@eipr.org.



GENERAL INFORMATION

1. Why bring a case before the African Commission?

- Commission is a quasi-judicial body offering important avenue for victims of human rights violations committed in Africa to bring cases against the state(s) responsible
- Fight impunity on national level
- Part of an advocacy strategy and public pressure
- Obtain remedy where other attempts have failed
- Venue to address structural problems, instead of focusing on the case of one individual.

2. Who can bring a complaint?

- States Parties to the African Charter (Articles 47 to 54) (See, e.g., *D. R. Congo v. Burundi, Rwanda and Uganda* [to date only inter-state case decided by the African Commission])
- Individuals and NGOs (Article 55)
 - Ordinary citizens, a group of individuals or NGOs
 - NGOs do not need observer status with the Commission to file a complaint
 - The author of the communication need not be related to the victim(s) of the abuse but the victim(s) must be mentioned.

Note: The Commission has a very broad approach to standing – in other words, to who can bring a complaint. The Commission has emphasized that persons wishing to file communications need not be victims or members of the victim’s family, or that violations of human rights need not amount to serious or massive violations. Persons other than victims can file communications and NGOs helping victims don’t need to be located in the state in question. Flowing from the above, it can be seen that, through this open-door approach to standing, individuals and NGOs play a very important role in the Commission’s fulfillment of its protective mandate.



3. Does the author of the complaint require consent of victim?

- Ordinarily, the author should have consent of victim. However, when it is impossible to get consent (for instance in cases of massive human rights violations, or where the victim is imprisoned or disappeared), the Commission might waive this requirement (See, e.g., *Article 19 v. Eritrea*(275/03)).

4. Is it possible to bring a class or representative action?

- Yes - where alleged violation relates to a large number of people or certain category of people (See, e.g. *Zimbabwe Lawyers for Human Rights, Human Rights Trust for Southern Africa v. The Government of Zimbabwe* (314/05) , *Article 19 v State of Eritrea*(275/03) and *Interights & Ditschwanelo v Botswana*(319/06).

5. Legal Representation and Oral Presentations?

- Cases need not be submitted by lawyers; however, the Commission has noted that legal representation can be useful.
- The complainant need not travel to the Commission to submit their Communication or argue their case; the case can be handled entirely through written submissions (though see below p.19 for the possibility of hearings).
- 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. Free legal aid shall only be facilitated where the Commission is convinced:
 - That it is essential for the proper discharge of the Commission's duties, and to ensure equality of the parties before it;
 - The author of the Communication has no sufficient means to meet all or part of the costs involved;

6. Against whom can a complaint be brought?

- Any state party to the African Charter
 - 53 member states of the African Union ("AU") have ratified the Charter; Morocco withdrew from the AU.

7. Main reference documents when submitting a communication

- The African Charter on Human and Peoples' Rights (also referred to as 'Banjul Charter', available here: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

- Rules of Procedure of the African Commission (http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf)
- Other international treaties, conventions and regional jurisprudence, which are relevant to the complainant's case.
 - Article 61 of the Charter: "The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African States as well as legal precedents and doctrine."
- See for further legal instruments that might be applicable subject to their ratification by the relevant state: <http://www.achpr.org/instruments/>

8. African Commission case law

- The best sources of African Commission case law include:
 - Case Law Analyser: <http://caselaw.ihrda.org/acmhpr/>
 - University of Pretoria, Centre for Human Rights: <http://www1.chr.up.ac.za/index.php/about-the-african-human-rights-case-law-database.html>
 - University of Minnesota: <http://www1.umn.edu/humanrts/africa/> (range of African human rights resources);
 - Commission Activity Reports: <http://www.achpr.org/search/?t=826>

9. Working languages

- Any communications submitted to the Commission must be in one of the African Union's working languages, which "shall be, if possible, African languages, Arabic, English, French and Portuguese."

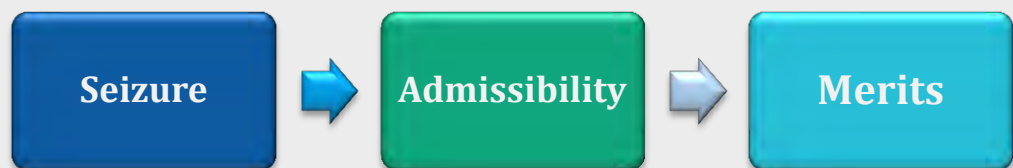
10. What is the procedure for bringing a complaint?

- The complainant sends a “letter of introduction” of a complaint in which he/she/they include a brief description of the facts, attempts to exhaust domestic remedies, contacts and other information contained in Rule 93(2) of the Rules of Procedure.
- The letter of introduction of complaint is sent to the Secretariat of the Commission, which is based in Banjul, The Gambia. It is sufficient to send the communications by email, however, it is advisable to also send a hard copy by regular mail.

Contacts:

Secretary, African Commission on Human and Peoples’ Rights
 Kairaba Avenue
 P.O. Box 673
 Banjul
 The Gambia
 Fax: +220 4392 962
 Email: au-banjul@africa-union.org

- Should the complainants not receive an acknowledgment, it is advised to follow up and request acknowledgment of receipt.
- After registering the Communication, there are three main stages:



SEIZURE

Seizure is the action by which the Commission decides to consider a Communication (Rule 93).



1. Seizure Requirements

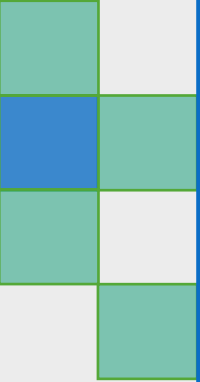
- For a communication to be seized by the Commission it must fulfill the following requirements:
 - Signed (if submitted online, then scan signature and send by email) – note that the complainant can request anonymity;
 - Against States that are parties to the Charter;
 - Reveal a *prima facie* violation of the Charter (reveal incidents that upon initial observation reveal a violation of human rights, rather than general statements about human rights situation in country).

2. Informing Parties

- If the Commission decides to be seized, the Secretariat will inform the complainant and the state concerned.
 - *Note:* the state is only now informed of the existence of the communication
- The communication is then deferred for consideration on admissibility

PROVISIONAL MEASURES

- According to Rule 98 of the Rules of Procedure, “at any time after the receipt of a Communication and before a determination on the merits, the Commission may, on its initiative or at the request of a party to the Communication, request that the State concerned adopt Provisional Measures to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands.”
 - A request for provisional measures can be submitted to the Commission at any time once the Commission has decided to be seized of the Commission. What constitutes a risk of irreparable harm is decided on a case by case basis.
 - For example: In *Egyptian Initiative for Personal Rights & Interights v. Egypt* (334/06), the Complainants requested provisional measures, in order to put a hold on the execution of a death sentence until the case before the Commission is considered. A death sentence is an example of irreparable harm. Other examples



where the Commission has requested the respondent state to adopt provisional measures include: cases of serious or massive violations; cases where the complainant was forcibly removed from his country of origin and wanted to return pending the outcome of the communication; cases where the complainants were prevented from voting in a national general election.

BUT -

The request for provisional measures is independent of a decision on the substance, as its purpose is to protect rights at the time the request is made. It does therefore not imply a decision of the Commission on the substance of the case.



ADMISSIBILITY

1. **Process of Admissibility** (Rule 105 of the Rules of Procedure + Article 56 of the African Charter)

- Once the communication is seized, the Commission will request the complainant to present evidence and arguments on admissibility within two months.
- The state party has two months from the time it is notified of the complaint's admissibility submission to submit its arguments on admissibility in response. Upon receiving the state's submissions, the complainant may comment on those submissions within a month.

2. **Admissibility based on the Charter:**

- Article 56 of the Charter sets out *seven* criteria for admissibility.
- It is essential that *all seven criteria* are met.

3. **Article 56(1): Indicate authors even if the latter request anonymity,**

- Name and address of author (and not necessarily the victim) must be provided.
- Need to justify request for anonymity?
 - No - reasons for anonymity are not required.
- Loss or lack of proper contact may result in communication being declared inadmissible or closed altogether (See, e.g., Comm. *Krishna Achutan and Amnesty International v. Malawi*(62/92), *Dioumessi and Others v. Guinea*(70/92), *Joana v. Madagascar*(108/93)).
- What happens if contact re-established?
 - Commission can reopen a closed communication or a communication that had been deferred *sine die* (*adjourned indefinitely*). Eg. *Riffaat Makkawi v. Sudan* (311/05).

4. **Article 56(2): "Compatible with the Constitutive Act of the AU or with the present Charter":**

- **Communication must *specifically* address violation of rights** guaranteed in Charter; cannot be just vague statements about general political situation in a country.

- Alleged facts must have occurred after the ratification of the Charter by the state against whom the complaint is submitted (except in the case of violations that continued to be perpetrated after the entry into force of the Charter, such as enforced disappearance).

5. **Article 56(3) “Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the AU:”**

- *Ligue Camerounaise des Droits de l'Homme v. Cameroon* (65/92): Communication inadmissible because of statements such as:

“regime of torturers”; “government barbarisms”; “Paul Biya must respond to crimes against humanity.”

6. When submitting a communication to the Commission, language used should therefore be neutral, and not aim at undermining the integrity/ status/ reputation of a person or an institution (such as a particular ministry or government).

7. **Article 56(4) “Are not based exclusively on news disseminated through the mass media”:**

- Author must investigate and ascertain truth of facts.
- Media reports can be used, though not exclusively, and must be accompanied / substantiated by other material. Evidence substantiating the allegations should be annexed to communication, including affidavits, court judgments, eyewitness/expert reports, reports of NGOs and international organisations (AU, UN, EU etc).

8. **Article 56(5): “Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged”**

*Note that this is the most critical criterion for admissibility; most cases fail because of lack of exhaustion***

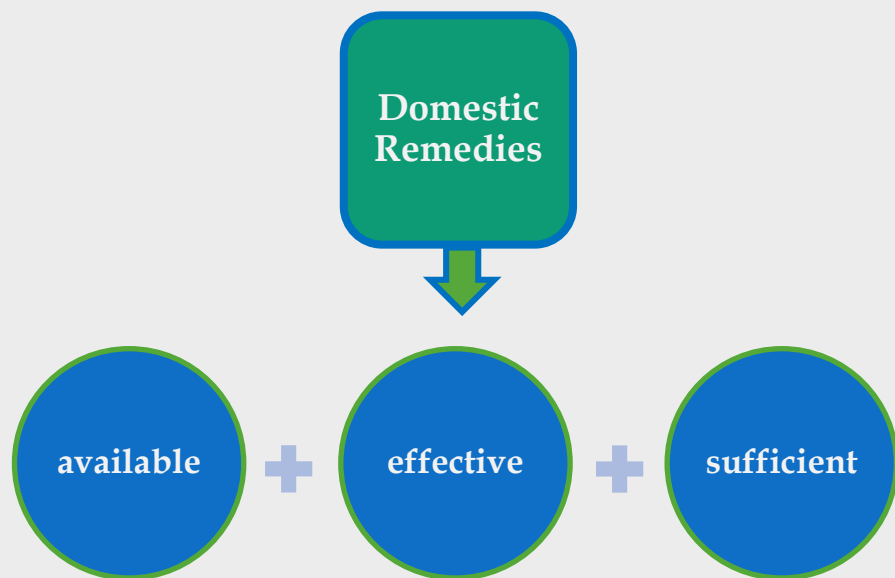
- “Local remedies” are any judicial/ legal mechanisms put in place at the domestic level to ensure the effective settlement of disputes.

9. **Article 56(5):**

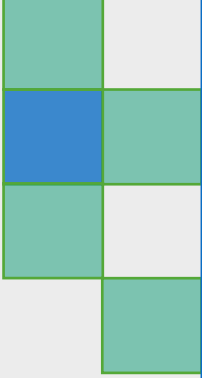
- What does “exhaustion” of local remedies mean?

- Before bringing a dispute to the Commission, the complainant must have utilized all the legal or judicial avenues available domestically to resolve the matter.
- Case is inadmissible if pending before the national courts, complainant fails to show that he/she made effort to appeal, or if the complainant chooses to apply for clemency instead of taking the matter to the courts.
- Local remedies must be *actually attempted*: complainant cannot rely on past or other experiences for not attempting.
- Must submit information on all the steps taken to exhaust local remedies; **however**:

10. Article 56(5):



- **Local remedies must be “available, effective and sufficient”**
 - A remedy is = “available” if the petitioner can pursue it without impediment.
 - A remedy is = “effective” if it offers a reasonable prospect of success.
 - A remedy is = “sufficient” if it is capable of redressing the complaint.



These criteria have been set out in many different cases from the Commission and are now well established. (the leading authority on these criteria is the case of *Sir Dawda K. Jawara / Gambia (The)* 147/95-149/96).

11. Article 56(5)

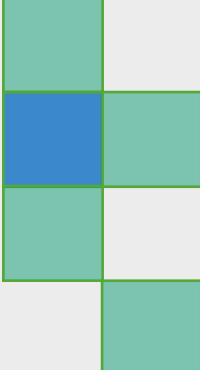
- **Who has the Burden of Proof?**

- Complainant has the burden to prove that local remedies exist and have been exhausted.
- Burden then shifts to the state, which must show why remedies have not been exhausted and how the remedies are available and can be used to solve complaint before Commission.
- General statements are not enough – specific proof is required

- *Article 19 v Eritrea: “Whenever a State alleges the failure by the Complainant to exhaust domestic remedies, it has the burden of showing that the remedies that have not been exhausted are available, effective and sufficient to cure the violation alleged, i.e. that the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right and are effective. When a State does this, the burden of responsibility then shifts to the Complainant who must demonstrate that the remedies in question were exhausted or that the exception provided for in Article 56(5) of the African Charter is applicable.”*

12. Article 56(5) – Exceptions:

- **Only available, effective and sufficient remedies need to be exhausted. Exceptions to the exhaustion of local remedies rule:**



Ouster of
jurisdiction
of courts

Situation of
serious or
massive
violations

Element of
fear

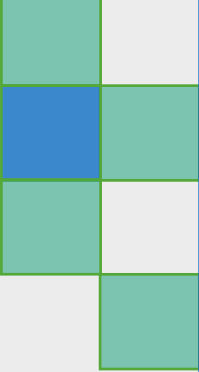
Unduly
prolonged
remedies

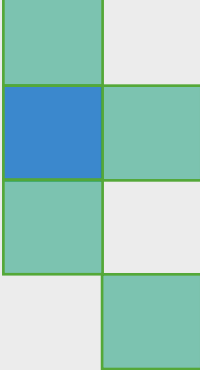
➤ Ouster of Jurisdiction of Courts

- Ouster: where state has adopted laws that oust (i.e. exclude or nullify) the jurisdiction of ordinary courts, local remedies are found to be non-existent (e.g. 129/94 - *Civil Liberties Org v Nigeria*: government enacted laws ousting the jurisdiction of courts in Nigeria to adjudicate legality of any decree. The Commission held that *'since the decrees complained of oust the jurisdiction of the courts to adjudicate their validity, it is reasonable to presume that local remedies will not only be prolonged but are certain to yield no results.'*)

"remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the complainant. Therefore, in a situation where the jurisdiction of the courts have been ousted by decrees whose validity cannot be challenged or questioned [...] local remedies are deemed not only to be unavailable but also non-existent."
Communication 147/95-149/96: Sir Dawda K. Jawara / Gambia, Para. 34

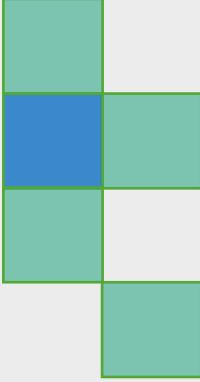
- Unduly Prolonged Remedies (e.g. – appeal pending for 12 years; case going on for 5 years)

- 
- In general, jurisprudence from the Inter-American Commission and Court for Human Rights as well as the African Commission suggest that the term “unduly prolonged” does not indicate a precise timeframe or duration. The time that elapses since domestic procedures are initiated together with the circumstances of the case and their relation to each other decide if the prolongation from the state’s side is to be seen as unjustifiable.
 - *Enga Mekongo v Cameroon* (59/91) – 12 years pending; *Oudjouriby Cossi Paul v Benin* (199/97) – case going on for 5 years.
- Element of Fear – fleeing one’s country
 - Element of Fear: where complainant has fled in fear from the country or where alleged violation took place and could therefore not exhaust domestic remedies – Communication MAY be declared admissible (see, e.g., *Ouko v. Kenya*(232/99); *Rights International v. Nigeria* (215/98); *Jawara v. The Gambia* (147/95). BUT... contrast these cases with *Mr. Obert Chinhamo v Zimbabwe* (307/05) and *Michael Majuru v. Zimbabwe* (308/05) – where Commission ruled that complainants did not demonstrate element of fear and decided Communication inadmissible for lack of exhaustion of domestic remedies).
 - Situation of Serious or Massive Violations: complainant must demonstrate nature and scope of violation(s) – must show, for example, that the victims are so many and the crimes are so serious or massive (widespread) that it is basically impractical to bring them before courts(This has happened in quite a few cases – e.g. cases against Sudan, Zaire (now Democratic Republic of Congo), and Rwanda).
 - Note: the underlying rationale for 56(5) is for the state to have ample notice of (an) alleged violation(s) and be given an opportunity to remedy it. If the state had ample notice and time yet failed to take steps to remedy the violation, this could undermine the availability, effectiveness or sufficiency of domestic remedies. (see, e.g. *Article 19 v. Eritrea* (275/03)).

- 
- Other instances where the Commission may consider that there is no need to exhaust domestic remedies include where the complainant(s) can show that the legal framework in the relevant Respondent State does not provide for “available, effective and sufficient” remedies in the specific case, for instance where an amnesty law or clemency order prevented a complainant from bringing a criminal action (*Zimbabwe Human Rights NGO Forum v Zimbabwe*, 245/02) or where broad immunity provisions shield alleged perpetrators from prosecution (*Monim Elgak, Osman Hummeida and Amir Suliman, (represented by International Federation for Human Rights (FIDH) and World Organization Against Torture (OMCT)) v. Sudan*, 379/09).

13. Article 56(6): “Are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter”

- Advisable to submit as soon as possible.
- Previously the Commission had been lenient with interpreting the “reasonable time” requirement, where cases were considered admissible within a spectrum that ranged from several months to 16 years. The Commission treated cases on their own merits depending on reasons given for their delay.
 - Communications were considered admissible after 16 years (97/93) and after 12 years (59/91), while others were considered inadmissible after 22 months (308/05).
- Recently the Commission has been relying on jurisprudence from the Inter-American and the European Court for Human Rights and their respective charters. Accordingly, the Commission has become more stringent with interpreting “reasonable time” to a period of **approximately six months**. This rule applies unless the Commission sees that there are compelling reasons, which delayed the communication.
 - In *Michael Majuru v. Zimbabwe* (308/05) the Commission stated that “The provisions of other international regional instruments like the European Convention on Human Rights and Fundamental Freedoms and the Inter-American Convention on



Human Rights, are almost similar and state that they ‘... may only deal with the matter ... within a period of six months from the date on which the final decision was taken’, after this period has elapsed the [European/ Inter-American] Court/Commission will no longer entertain the communication.” In this case, the Commission considered that a 22 months delay in bringing the case before the Commission was outside a ‘reasonable time’ period.

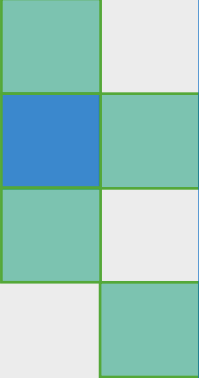
- However, the Commission has also emphasized that while elsewhere six months seems to be the usual standard, each case must be treated on its own merit. Where there is good and compelling reason why a Complainant could not submit his/her complaint for consideration on time, the Commission may examine the complaint to ensure fairness and justice.

14. Article 56(7):

“Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the AU or the provisions of the present Charter.”

- Communications that have been finalized by some other international mechanism similar to the Commission = inadmissible
 - E.g. *Amnesty International v. Tunisia* (69/92)
 - Communications still pending before another adjudicating body = inadmissible
 - E.g. *Mpaka-Nsusu v. Zaire*(15/88): communication already been referred to UN Human Rights Committee
- Commission will, however, consider communications that have been discussed by non-judicial international bodies, such as UN special rapporteurs
 - E.g. *Bakweri Land Claims Committee v Cameroon* (260/02)
 - E.g. *SHRO & COHRE v Sudan* (279/03 and 296/05)

15. Revision of Decision on Admissibility

- 
- If Commission declares a communication inadmissible, complainant can reintroduce it to the Commission for review.
 - Rule 107(4) If the Commission has declared a Communication inadmissible this decision may be reviewed at a later date, upon the submission of new evidence, contained in a written request to the Commission by the author.
 - For example - when reason for declaring inadmissible has been rectified or where complainant believes Commission made a mistake.

16. Amicable Settlement (Rule 109)

- Once a communication is declared admissible, the Commission puts itself at disposal of parties to facilitate friendly settlement. This can occur at any stage in proceedings.
- If friendly settlement is reached, a report containing terms of settlement is presented to the Commission. Matter is then closed.
- The Commission strongly encourages friendly settlement of the dispute. If parties express willingness to settle the matter amicably, then the Commission will appoint a Rapporteur to facilitate:
 - Settlement can only be made: 1) in compliance with human rights; and 2) with full cooperation of both parties. This is important because an imbalance of power between two parties can steer complainant to accept something that is not to their advantage.
- Revised Rules of Procedure - Commission is now compelled to make it publicly known how the settlement fulfills the two requirements above.

17. Declared Admissible? What Next?

- When a Communication is declared admissible, and is not settled amicably, the Commission will invite the complainant to make submissions on the merits within 60 days.



MERITS

1. Definition and process:

- Once communication is declared admissible, Commission proceeds to consider substantive issues of the case.
- **Article 46:** the Commission can use any appropriate method of investigation: e.g. fact-finding visits.

2. Timing and procedure (Rule 108)

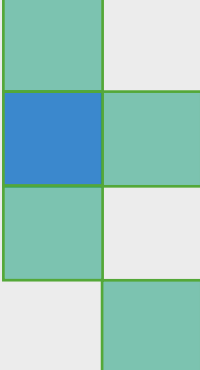
- Time taken to reach a decision depends on many factors like the schedule of the Commission, the number of its sessions and the diligence of the complainant. However, on average, it is a process that takes several years.
- The respondent state has a right of reply within 60 days after the complainant submits its submissions on the merits.
- After the state party makes its submissions, the complainant may make additional submissions in response within 30 days. This time limit cannot be extended. Both parties are entitled to copies of each other's submissions.

3. Applicable laws and principles

- In deciding on the merits, the Commission examines all the allegations and arguments submitted by the parties. If the respondent state fails to make any submission on the merits, the Commission should proceed to examine the Communication only on the basis of information received from the complainant(s).
- The Commission applies the African Charter and general international human rights law, principles and standards (Articles 60 & 61).

4. Types of evidence accepted

- Documents can be included to support alleged facts (e.g. - affidavits; court judgments, witness testimony; Expert opinions; Medical / psychological records; photographic evidence; reports of NGOs and international organisations (UN, AU, EU, etc), ; Media articles).
- Generally, the more information that can be submitted to support an alleged violation, the better. When submitting the information to the Commission's Secretariat, it is important to



ensure that the Secretariat receives all information used, possibly by way of annexing the information to the communication. As files can get lost, it is advisable to send information electronically as well as by post, and to request acknowledgment of receipt of all information submitted (e.g. of communication and of X number of Annexes). It is also important to keep a copy of all information submitted to the Commission in case a dossier is lost at a later stage in the proceedings.

5. Practical advice for drafting communication on merits

- Ensure that all allegations are well supported and based on specific facts.
- Clearly specify the rights that are violated with reference to the African Charter.
- Conduct thorough research on Commission case law and other int'l human rights jurisprudence dealing with the relevant rights.

6. Hearings at the Commission: (Rule 99 (4)):

- The Commission's Rules of Procedure provide both parties to a communication with the possibility to request a hearing, on the admissibility and/ or the substance of the Communication (see Rule 99).
- A hearing can help you to present facts directly to the Commission, and to argue your case in front of the Commission and answer any questions that the Commission may have. It could also provide an opportunity for the victim to present her/ his case to the Commission.
- However, a hearing may also delay the consideration of a communication by the Commission and involve significant costs as it requires travelling to the Commission's session and possibly an extended stay during the session. it is important to weigh the advantages/ disadvantages of requesting a hearing.
- A party requesting a hearing shall do so at least 90 days before the beginning of the session in which the Communication is being considered. A request can be made by a letter outlining the reasons why a hearing will help the facilitation of the communication procedure.



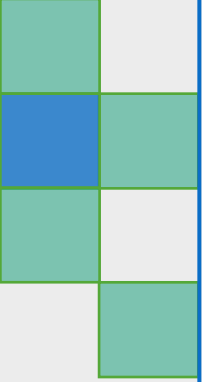
REMEDIES

1. Description

- In order to encourage the Commission to specify a remedy, complainants must clearly request a remedy and justify why it is appropriate.
- Advisable to request specific remedies for later follow up on their implementation by the state.
- Include remedies that will not only deal with the individual case at hand, but will address a more systemic, structural flaw.

2. Types of remedies/ forms of reparation

- Remedy/ form of reparation requested must depend on the nature of the violation and the different types of harm inflicted on the complainant, as well as the structural reasons which have led to such harm (e.g. legal structure, policies, discrimination)
- Forms of Reparation include:
 1. Restitution: restore complainant to original situation before violation. Includes: restoration of liberty, citizenship, return to one's place of residence, restoration of employment and return of property.
 2. Compensation: economically assessable damages for moral, material or other forms of harm
 - Advisable to ask for a specific amount, factoring in inflation during the years the communication is considered
 3. Rehabilitation: for instance (access to) medical and/ or psychological care as well as legal and social services.
 4. Satisfaction: can include broad range of measures, for instance a retrial in case of wrongful conviction; obligation to carry out an independent and thorough investigation and prosecution of those responsible for the violation (s); apology from State/ from authority in question; publication of ACmHPR's ruling; building of monuments; granting citizenship)
 5. Guarantees of non-repetition: remedies that contribute to prevention of further occurrence of similar violations

- 
- Structural changes (e.g. repeal of decrees/laws that are for instance a barrier to accountability (such as amnesty laws or immunity provisions) or reforming electoral laws);
 - Request state to investigate, prosecute and punish perpetrators - for torture related violations, consult the Istanbul Protocol; for extra-judicial killings, consult Minnesota Protocol.



1. What if a state fails to respond?

- It is not unusual for States to ignore communications and refuse to cooperate with the Commission.
- In this case, the Commission relies on the facts at its disposal to reach a final decision.

2. Withdrawal of communication

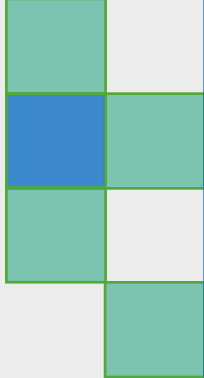
- A complainant may decide to withdraw a communication at any stage of the proceedings.

3. Rulings of the Commission

- Recommendations / Decisions are made after consideration of the facts submitted by author, state party's observations (if any) and proceedings before Commission.
- The recommendations remain confidential until they are adopted by the Assembly of Heads of State of the African Union at its annual meeting (Article 59).
- Parties then receive a letter from the Secretariat of the Commission with the decision.

4. Enforcement

- The Commission is a quasi-judicial body and some states have in the past argued that the Commission's final recommendations are therefore not legally binding.
- Commission usually requires the state to inform it, within 180 days, of the measures taken to implement the recommendations.
- It is left to the complainant to develop a strategy to ensure enforcement which can include a variety of steps outlined further below. It is important to keep the Commission informed about the status of implementation in the respondent state.
- It can be helpful to request the Commission to inform you about the date in which the respondent state was notified, which authority in the respondent state was notified and to possibly send the decision to other bodies/ authorities in the respondent state.



- Institutions best placed to facilitate enforcement at the national level include:
 - Government/Executive: to engage relevant national institutions to address specific reparation measures such as obligation to investigate and prosecute; compensation; rehabilitation; apologies; law reform proposals; erection of monuments etc;
 - Courts: for freeing detainees for example;
 - Parliament: for legislative amendments and changing laws
 - National human rights institutions - for recommendations on compliance.
 - Complainants can also go back to the Commission in cases of non-compliance- for instance by filing a separate complaint using Article 1 or use the state reporting procedure of the Commission under Article 62 to raise failure of compliance.
 - Media - Can be a tool of advocacy directed at the concerned executive bodies to comply with the Commission’s decision and implement it

FREQUENTLY CITED CASES:

Case	Subject/ Articles violated
Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria 155/96	<ul style="list-style-type: none"> • Right to Freedom from Discrimination • Right to Life • Right to Property • Right to Health • Protection of the Family and Vulnerable Groups • Right to Free Disposal of Wealth and Natural Resources • Right to a General Satisfactory Environment

**Sir Dawda K. Jawara /
Gambia (The)
147/95-149/96**

- Right to Freedom from Discrimination
- Right to Personal Liberty and Protection from Arbitrary Arrest
- Right to Fair Trial
- Right to Receive Information and Free Expression
- Right to Freedom of Association
- Right to Freedom of Assembly
- Right to Freedom of Movement
- Right to Participate in Government
- Right to Self-Determination
- Duty to Guarantee Independence of Courts

**Egyptian Initiative for
Personal Rights &
INTERIGHTS / Egypt**

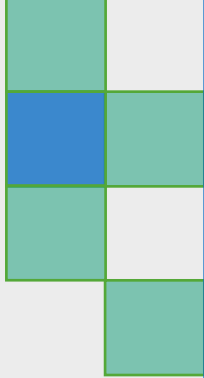
- Obligations of Member States
- Right to Freedom from Discrimination
- Right to Equality before the Law and Equal Protection of the Law
- Prohibition of Torture and Cruel, Inhuman and Degrading Treatment
- Right to Receive Information and Free Expression
- Right to Health
- Protection of the Family and Vulnerable Groups
- Duty to Guarantee Independence of Courts

**Centre for Minority Rights
Development (Kenya) and
Minority Rights Group (on
behalf of Endorois Welfare
Council) / Kenya
276/03**

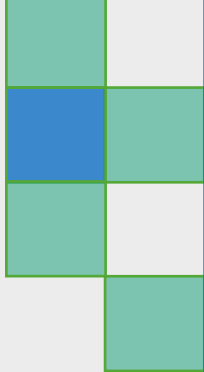
- Right to Freedom of Conscience
- Right to Property
- Right to Education
- Right to Free Disposal of Wealth and Natural Resources
- Right to Economic, Social and Cultural Development

**Malawi Africa Association,
Amnesty International, Ms
Sarr Diop, Union
interafrique des droits de
l'Homme and RADDHO,
Collectif des veuves et
ayants-Droit, Association
mauritanienne des droits de
l'Homme / Mauritania
54/91-61/91-96/93-98/93-
164/97_196/97-210/98**

- Right to Freedom from Discrimination
- Right to Life
- Prohibition of Torture and Cruel, Inhuman and Degrading Treatment
- Right to Personal Liberty and Protection from Arbitrary Arrest
- Right to Fair Trial
- Right to Receive Information and Free Expression
- Right to Freedom of Association
- Right to Freedom of Assembly
- Right to Freedom of Movement
- Right to Property



	<ul style="list-style-type: none"> • Right to Health • Protection of the Family and Vulnerable Groups • Duty to Guarantee Independence of Courts
<p>Civil Liberties Organisation (in respect of the Nigerian Bar Association) / Nigeria 101/93</p>	<ul style="list-style-type: none"> • Right to Personal Liberty and Protection from Arbitrary Arrest • Right to Fair Trial • Right to Freedom of Association
<p>Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interfricaine des Droits de l'Homme, Les Témoins de Jehovah / DRC 25/89-47/90-56/91-100/93</p>	<ul style="list-style-type: none"> • Right to Life • Prohibition of Torture and Cruel, Inhuman and Degrading Treatment • Right to Personal Liberty and Protection from Arbitrary Arrest • Right to Fair Trial • Right to Freedom of Conscience • Right to Health • Right to Education
<p>Constitutional Rights Project (in respect of Wahab Akamu, G. Adegas and others) / Nigeria 60/91</p>	<ul style="list-style-type: none"> • Right to Fair Trial
<p>Commission nationale des droits de l'Homme et des libertés / Chad 74/92</p>	<ul style="list-style-type: none"> • Right to Life • Prohibition of Torture and Cruel, Inhuman and Degrading Treatment • Right to Personal Liberty and Protection from Arbitrary Arrest • Right to Fair Trial • Right to Freedom of Association
<p>Constitutional Rights Project (in respect of Zamani Lakwot and six others) / Nigeria 87/93</p>	<ul style="list-style-type: none"> • Right to Fair Trial
<p>Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan 48/90-50/91-52/91-89/93</p>	<ul style="list-style-type: none"> • Right to Freedom from Discrimination • Right to Life • Prohibition of Torture and Cruel, Inhuman and Degrading Treatment • Right to Personal Liberty and Protection from Arbitrary Arrest • Right to Fair Trial • Right to Freedom of Conscience • Right to Receive Information and Free



	<p>Expression</p> <ul style="list-style-type: none">• Right to Freedom of Association• Duty to Guarantee Independence of Courts
<p>Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) / Zambia 71/92</p>	<ul style="list-style-type: none">• Right to Freedom from Discrimination• Right to Fair Trial• Right to Freedom of Movement
<p>Embga Mekongo Louis / Cameroon 59/91</p>	<ul style="list-style-type: none">• Right to Fair Trial
<p>Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa), Amnesty International (on behalf of Orton and Vera Chirwa) / Malawi 64/92-68/92-78/92_8AR</p>	<ul style="list-style-type: none">• Right to Life• Prohibition of Torture and Cruel, Inhuman and Degrading Treatment• Right to Personal Liberty and Protection from Arbitrary Arrest• Right to Fair Trial