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INFORMATION SHEET NO.2

GUIDELINES OF THE SUBMISSION OF COMMUNICATIONS

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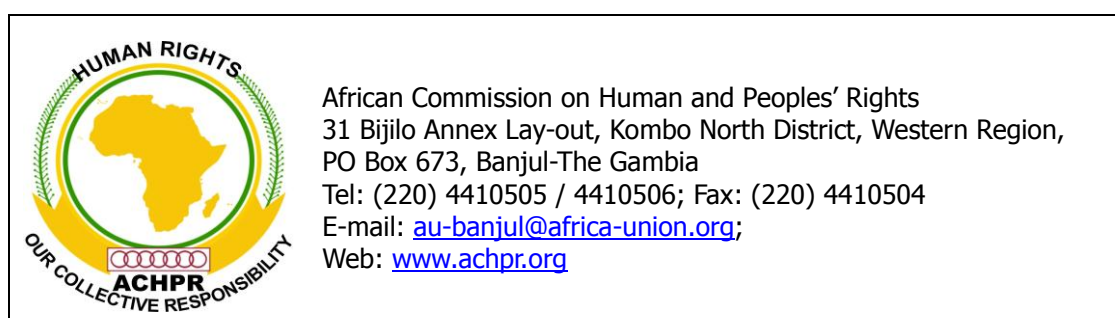
INFORMATION SHEET NO.2

**GUIDELINES OF THE SUBMISSION OF
COMMUNICATIONS**

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This Information Sheet is published by the Secretariat of the African Commission on Human and Peoples' Rights. This document explains in clear and simple language how to submit a complaint (communication or petition) to the African commission. Its purpose is to inform 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, procedure for submitting complaints / communications, urgent communications, who can submit a communication, how many violations per communication, legal representation and a standard format for the submission of communications.

The production of this Information Sheet in languages other than the original language is encouraged so long as no changes are made to its content and provided that the African commission is mentioned as the source.



Introduction

Most people who suffer human rights abuses sometimes do not know that their rights have been violated, and even if they know, may not know where or who to turn to for help even within their own countries. It is very important for NGOs and governments to educate people about their human rights and inform them of the local and international remedies available to them when their rights are violated. International intervention is always chosen as a last resort when the local justice delivery system has failed to reinstate the victim in his or her rights. One of the main functions of the Commission is to receive complaints / communications submitted by individuals, NGOs and States Parties to the African Charter, alleging violations of human rights by these states.

Any person, group of persons or State party alleging a violation, can submit a complaint alleging violation of human rights to the African Commission alleging that a State Party to the Charter has violated the rights guaranteed therein. The person making the allegation can first of all ascertain whether the State Party alleged to have committed the violation has ratified the Charter, and in the case of a State, it must have ratified the Charter before submitting a complaint against another State Party to the Charter.

By submitting a communication to the African Commission on Human and Peoples' Rights, victims of human rights abuses who for one reason or another could not obtain justice in their countries after exhausting all the available legal remedies, may obtain help.

Under Article 46 of the Charter, the Commission has the power to use any appropriate method of investigation into allegations of human rights abuses. Where the Commission finds that violations have occurred, it makes recommendations to the State(s) concerned; to ensure that the occurrences are investigated, that the victim(s) is compensated (if necessary) and that measures are taken to prevent the recurrence of the violations.

The Commission's recommendations are submitted to the Assembly of Heads of State and Government of the AU for adoption. The decision of the Assembly is final.

The Rights and Freedoms guaranteed in the Charter

Understanding the rights and freedoms guaranteed in the Charter is particularly important for the submission of a communication 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. The complainant need not mention the specific article of the Charter alleged to have been violated, but the facts of the communication should be such that the Commission can deduce therefrom the violations alleged.

Two main categories of rights are covered in the Charter.

(1) Individual Rights

These are the rights and freedoms one enjoys as an individual and not because one belongs to a particular community or social grouping or any other association.

These individual rights are divided into civil and political rights, on one hand, and economic, social and cultural rights on the other.

(a) Civil and Political Rights

- the right not to be discriminated against **(article 2)**;
- equality before the law (article 3);
- the right to life (article 4);
- the right to inherent dignity and freedom from exploitation, slavery and slave trade; freedom from torture, cruel, inhuman or degrading punishment and treatment **(article 5)**;
- the right to personal liberty and security of the person **(article 6)**;
- the right to a fair trial **(article 7)**;
- freedom of conscience, worship and religion **(article 8)**;
- the right to receive information and freedom of expression **(article 9)**;

- freedom of association (**article 10**);
- freedom of assembly (**article 11**);
- freedom of movement, including the right to leave and enter one's country and the right to seek and obtain asylum when persecuted (**article 12**);
- the right to participate in the government of one's country and the right of equal access to public service (**article 13**);

(b) **Economic, Social and Cultural Rights**

- The right to own property (**article 14**);
- the right to work under equitable and satisfactory conditions and receive equal pay for equal work (**article 15**);
- the right to physical and mental health (**article 16**);
- the right to education and the freedom to take part in cultural activities in one's community (**article 17**);
- the family right to protection and assistance from the state, the right to special measures of protection for the aged and disabled and the freedom from discrimination of women and children (**article 18**).

(2) Peoples' Rights

Although the terms 'peoples rights' have not been defined in the Charter, these rights generally refer to the rights of a community to determine how they should be governed, how their economies and cultures should develop; they include other rights such as the right to national and international peace and security, the right to a clean and satisfactory environment. This category of rights is also called group or solidarity rights.

Who can submit a communication to the Commission?

Anybody, either on his or her own behalf or on behalf of someone else, can submit a communication to the Commission denouncing a violation of human rights. Individuals, NGOs, and States Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned.

Complaining on behalf of someone else, for example, a prisoner who can't submit a communication himself or who does not want the authorities to know that he is petitioning is very helpful.

Legal Representation

Since the preparation, submission and processing of a communication is a relatively straightforward procedure, a complainant or author can act on his or her own without the need for professional legal assistance. However, it is always useful to seek the help of a lawyer. A lawyer would understand the technical aspects better and would therefore be able to advise, recommend, help to interpret the rights alleged to have been violated, draw up additional arguments, and set out the case in an efficient manner that will demonstrate to the Commission that one or more rights have been violated.

The complainant or his/her legal representative (if any), need not travel to the Commission's session to present or defend a case. The case can be started and concluded only through correspondence with the Secretariat of the Commission. However, if the parties are needed for all submission, they would be informed by the Commission.

It should be noted that the Commission does not offer legal assistance to complainants. Persons in need of such assistance may approach one of the various legal assistance groups which exist in most countries or the Bar Association.

Conditions for admitting a communication¹

Article 56 of the African Charter outlines seven conditions that must be met before a communication can be considered by the Commission. These are as follows:

¹ See Information fact Sheet No. 3 for a detailed explanation of these conditions.

- the communication must include the author's name even if the author wants to remain anonymous;
- the communication must be compatible with the Charter of the AU and with the present Charter.
- the communication must not be written in insulting language directed against the state or the AU;
- the communication must not be based exclusively on news from the media;
- the complainant must have exhausted all available domestic legal remedies;
- the communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies;
- the communication must not deal with a matter which has already been settled by some other international human rights body.

How many violations per communication

From the wordings of Article 58(1) of the Charter, it would seem that the Commission can only consider a communication when the latter reveals a series of serious and massive violation of human and peoples' rights, and only after the Assembly of Heads of State and Government would have requested it to do so. However, the practice of the Commission has been to consider every communication even if it refers to only a single violation of the Charter. The rationale behind this practice is that a single violation still violates the dignity of the victim and is an affront to international human rights norms.

What a communication should include

All communication must be in writing, and addressed to the Secretary or Chairman of the African Commission on Human and Peoples' Rights. There is no form or special format that must be followed, but a communication should contain all the relevant information. If the communication is submitted by an individual or group of individuals, it should include the name(s) of the complainant or complainants, their nationalities, occupation or profession, addresses and signatures. If the communication emanates from an NGO, it should include the address of the institution and the names and signatures of its legal representatives.

If the communication is from a State Party, the names and signature of the State representative, together with the national seal would be required.

Each communication should describe the violation of human and/or peoples' rights that took place, indicate the date, time (if possible), and place where it occurred. It should also identify the State concerned. The communication should also include the victim's names (even if the latter wants to remain anonymous, in which case, this should be stated), and if possible, the names of any authority familiar with the facts of the case.

It should also provide information indicating that all domestic legal remedies have been exhausted. If all remedies were not exhausted, the complainant should indicate the reasons it was not possible to do so.

The complainant should also indicate whether the communication has been or is being considered before any other international human rights body, for instance, the UN Human Rights Committee.

As a general rule, the communication should state only the facts and not be written in vulgar or insulting language. The complaints should be drafted in a clear, simple and straightforward manner, free from unnecessary rhetoric. Any complainant who fails to meet these requirements will be notified and where necessary, asked to furnish the Commission with additional information.

Emergency Communications / Provisional Measures

Every communication should indicate if the victim's life, personal integrity or health is in imminent danger. In such emergency situations, the Commission has the powers under **Rule 111** of its Rules of Procedure to adopt provisional measures, thereby 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 Commission. The Commission can also adopt other urgent measures as it sees fit.

Standard format for the Submission of Communications

As mentioned earlier, there is no hard and fast rule or format for the submission of communications to the Commission, but the following simplified format will make it much easier for would-be complainants to submit their communications.

The guidelines are in two categories: (inter-State communications) and other (or individual communications)

**(A) Communications submitted under Articles 47 - 49
(Communications from States)**

1. **Complaining State(s)** (should state amongst other things, its name, official language, and year in which it ratified the Charter).
2. State Party accused of the violation (state the year the State ratified the African Charter, its official language).
3. Facts constituting the violation (Please explain in as much a factual detail as possible what happened, specifying place, time and dates of the violation, if possible).
4. Exhaustion of local remedies (indicate measures that have been taken to resolve the matter amicably why this measure failed, or why it wasn't used at all. Also indicate measures taken to exhaust local remedies. (Please attach all relevant documents).
5. Domestic legal remedies not yet pursued (please give reasons why this has not been done).
6. Other International avenues (state whether the case has also been referred to any other international settlement body either at the UN or within the AU system).

**(B) Communications submitted pursuant to article 55 of
the Charter (other communications)**

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** (please make sure it is a State Party to the African Charter).
3. **Facts constituting alleged violation** (Explain in as much a factual detail as possible 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've been to, attach copies of court judgments, writs of habeas corpus etc. (give reasons why they have not been pursued)
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).

**For further information, please contact:
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