

The background is a composite image. The left side shows a man in a white shirt on a boat, looking out at the water. The right side shows a man in a white shirt on a boat, handling fish. The image is split diagonally, with the top right portion being orange and the bottom left portion being white. The text is centered in the white area.

**The African
Commission on Human
and Peoples' Rights**

About the **African Commission on Human and Peoples' Rights**

The African system for the protection of human rights consists of the African Commission on Human and Peoples' Rights, which serves as a complaints and reporting mechanism, and the African Court on Human and Peoples' Rights, whose decisions are legally binding on the State Parties.

The African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights ("the Commission") is mandated with the protection and promotion of human and peoples' rights in Africa. It is also responsible for the interpretation of the *African Charter on Human and Peoples' Rights* ("the African Charter"), taking into consideration the *Charter of the Organisation of African Unity* (now the *Constitutive Act of the African Union*), the *Universal Declaration of Human Rights* and other United Nations and African instruments in the field of human and peoples' rights.

The Commission was established by the African Charter, and was inaugurated on 2 November 1987. Its secretariat is located in Banjul, The Gambia. It consists of 11 members, who are elected for a six-year term by the African Union Assembly from experts nominated by State Parties to the Charter to serve in their personal capacity.

The Commission acts as a quasi-judicial body, reviewing complaints lodged by states, individuals or non-governmental organisations (NGOs) regarding violations of the African Charter. It is primarily individuals and NGOs that use the individual complaint process. The State complaints procedure has only been used once to date. It has the power to check whether countries are meeting their legal obligations to protect human rights, as set out in the Charter.

The African Court on Human and Peoples' Rights

The African Court was established by an additional Protocol to the African Charter, which came into force in 2004 and has currently been ratified by 27 States. The Court is located in Arusha, Tanzania and consists of 11 independent judges. The Court complements the African Commission and its decisions are legally binding. The African Commission can refer cases to the African Court on Human and Peoples' Rights. It does so when: it considers that a State has not complied with, or is unwilling to comply with recommendations in its communications; it considers a State has not complied with provisional measures requested; where a situation comes to its attention that constitutes one of serious or massive violations of human rights; or, if intervention deems necessary.



Relevant Provisions of the Charter

State Parties have the duty to protect the human and peoples' rights of their populations, under the African Charter. Complaints (called "communications") related to corporate misconduct can only be filed where a State has failed to protect particular rights under the Charter. Where a corporation is state-owned (either in whole or in part), a communication can be filed against a State for its role in a corporation's alleged violations. A State may also be held responsible for human rights violations perpetrated by third parties in which it has no stake, such as corporations, if it can be proven that the State has failed to protect its citizens from the acts of private actors.

Within the African Charter, the rights that are most relevant in cases of corporate misconduct include the following:

Civil and Political Rights

Article 4 Respect for life and integrity of the person.

Article 5 Right to dignity inherent in the human being.

Article 6 Right to liberty and security of the person.

Article 9 Right to receive information and to express and disseminate opinions.

Article 10 Right to freedom of association.

Article 11 Right to freedom of assembly.

Article 12 Right to freedom of movement.

Article 14 Right to property.

Economic, Social and Cultural Rights

Article 15 Right to work under equitable and satisfactory conditions, and equal pay for equal work.

Article 16 Health rights.

Article 17 Education rights, cultural rights, rights to traditional values.

Peoples' Rights

Article 19 Right to equality.

Article 20 Right to self-determination.

Article 21 Right to dispose of wealth and natural resources.

Article 22 Right to economic, social and cultural development.

Article 23 Right to national and international peace and security.

Article 24 Right to a general satisfactory environment.



How to file a complaint

The following step-by-step guide explains the process that victims and/or representative complainants can follow to submit a communication to the African Commission. There are various tools available for assistance. The African Commission can provide advice and additional information about submitting a complaint. More information can also be found at http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf

Overall strategic considerations

- Consider whether the Commission and filing a communication is the best forum and method for dealing with the issue and achieving what you are aiming for? Are you willing to reach agreement through amicable resolution?
- Consider the length of time and the costs that may be involved in a communication with the Commission.
- Consider what you will do if the State refuses or fails to comply with a favourable ruling of the Commission.
- Think about other advocacy strategies to press for a resolution and whether you can pursue these at the same time as going through the communication process.
- Reflect on whether a communication will potentially increase risks to the victims and what avenues exist for addressing these risks. Should the victim and/or author be treated confidentially?

The African Commission on Human and Peoples' Rights Complaint Procedures

Individuals can file complaints (or “communications”) to the Commission alleging violations of the African Charter by a State. However, the argument can be made that the State has not provided sufficient protection against human rights or environmental violations by a company.

Upon receipt of a communication, the Secretariat of the Commission will issue a letter of acknowledgement. A summary of the complaint is then prepared and presented for consideration by the 11 Commissioners. They must decide by majority rule whether they will consider it after determining whether there are any allegations of violations of the African Charter or whether it has been properly submitted according to the provisions in Article 55 of the Charter.

Once the decision has been made, the communication will be considered at the Commission’s next session. The Secretariat will inform the parties and the complainant has a further three months to submit additional comments on admissibility. The Commission may also ask complainants to respond orally at this stage. If the communication is deemed admissible, the complaint will then be forwarded to the relevant State Party, which is subsequently asked to respond to the communication within three months.

At any stage of the communication, the Commission can offer to facilitate a friendly settlement of the dispute (similar to mediation) at the request of any of the parties involved. If both parties are willing to settle the dispute amicably, a Rapporteur will be appointed. If a settlement is reached, the terms of settlement are presented to the Commission at its session and the case is considered closed. If no agreement can be reached, a report is submitted to the Commission and a decision will be made on the admissibility or merits of the case.

Consideration of the merits

After a communication has been declared admissible, or if an amicable settlement cannot be reached or is unsuccessful, the substantive issues of the case will be examined, including any responses by the complainant and the State.

Preparation before filing the complaint

- Consider who the person and/or entity responsible for the rights violations is. The African Commission can only hear communications for violations of rights by State Parties to the African Charter.
- Document exactly how the State is responsible for the human rights violations. Did the State fail to prevent, remedy, investigate or punish those responsible for the violation, or did it support, contribute to, or was it complicit in the violation?
- Determine what human rights have been violated and whether these fall within the African Charter.
- Check whether the violation occurred in one of the African States that have ratified the African Charter.
- Check whether all domestic legal remedies have been exhausted. If not, explain why.
- It may help to have legal assistance or an experienced NGO help with the communication.

'Complaints on corporate misconduct can only be filed where a State has failed to protect particular rights under the African Charter.'

The communication is usually dealt with via correspondence, but sometimes complainants can be asked to present evidence at a session of the Commission. If a State fails to respond to allegations in a communication, the Commission has no alternative but to rely on the information available to it to make a decision. The Commission can resort to any appropriate methods or means of investigation to make a decision – including obtaining information from alternative sources and third parties, and site visits or protection missions.

After consideration of the facts on both sides and after interpretation of the African Charter, the Commission will make a decision regarding whether any of the provisions within the Charter (or associated instruments) have been violated.

The Commission's final decisions are called "recommendations". These are not binding judgments. They are non-binding until the relevant Commission activity reports are adopted by the Organisation of African Unity (OAU) Assembly of Heads of State and Government.

There are no mechanisms or procedures that compel implementation of the Commission's recommendations. A recommendation usually addresses an interpretation of the relevant sections of the Charter, discussion as to whether a violation has been found and recommendations for actions to be taken by the State to provide remedy.



Write the communication

There are a number of guidelines when submitting a communication to the Commission. The communication should include (see also Rule 93 of the Rules of Procedure):

- The name and details of the complainant(s). Specify if the complainant wants their details to remain confidential.
- The name of the State and the titles of the government authorities who have committed the violation.
- A description of the facts causing the violation, including the date, time and place. Be precise and do not base facts exclusively on media reports. Attach further supporting evidence like photos or video footage, if available.
- If possible, a list of the provisions of the African Charter that have been violated. If it is unclear, do not mention any.
- Names and contact details of witnesses.
- Provide evidence that local remedies have been exhausted, or an explanation as to why not.
- Information as to whether the communication has been, or is being, considered before any other international human rights body.
- If the matter is urgent – explain the urgency of the situation.

The who, what, when, where, and why of filing a complaint

Who: Any person who feels that their rights under the African Charter have been violated may file a complaint (or “communication”). Any ordinary citizen, group, NGO and State Parties to the African Charter may also file a complaint on behalf of the victim, as long as the victim is mentioned. If necessary, individuals can nominate legal representatives to assist them. Authors must indicate their name and address. If the complainant wants to remain anonymous, this should be expressly set out in the communication, as the Commission can treat personal details with confidentiality where requested.

A complaint can only be brought against a State that has ratified the African Charter (this currently includes all African states except Morocco and South Sudan, which have not ratified the Charter.)

What: A complaint must describe a violation of rights as set out in the African Charter, or the Maputo Protocol.

When: A complaint should be submitted in a reasonable time (ideally as early as possible) after the violation has occurred and after all available local remedies have been pursued. If these remedies are not available (or if they are available but the process is taking too long; if the complaint involves serious or massive violations; or if there are many people making the complaint), the complaint can be submitted directly. However, the individual or NGO must state why it was not possible to exhaust local remedies first. What constitutes “reasonable time” is not explicitly defined. However, “good and compelling” reasons must be given to explain why a communication could not be filed in a timely manner.

Where: The complaint should be submitted to the Secretariat of the African Commission based in The Gambia, either via mail (see address in Step 4 of How to File a Complaint) or electronically at: au-banjul@africa-union.org

Why: Submitting a complaint to the African Commission allows complainants to raise issues relating to civil, economic, social and cultural rights, as well as labour-related issues and rights. Complaints are likely to raise awareness of an issue nationally, regionally and internationally and could result in the Commission making a formal recommendation to a State Party to improve a situation or to recommend provisional State measures to avoid irreparable damage. It could help to resolve a dispute between you and a State Party and indirectly address the role of companies in the violation by the State.

File the complaint

You must submit the communication in writing, addressed to the Secretary or Chairman of the African Commission on Human and Peoples' Rights at the following address: The African Commission on Human and Peoples' Rights
No 31 Bijilo Annex Layout
Kombo North District, Western Region
P.O. Box 673
Banjul, The Gambia
T + 220 441 05 05; 441 05 06
F + 220 441 05 04
au-banjul@africa-union.org

Follow up on your complaint

- There are official mechanisms for monitoring recommendations issued by the African Commission, including through promotional missions and monitoring of State reports. Rule 112 also requires the parties to report on implementation within 180 days. The Secretariat does send follow-up letters to States, asking them to honour their obligations under the Charter, and reminding them to follow their recommendations.
- There is no mechanism that can enforce States to abide by recommendations, although the Commission can refer the case to the African Court if the State fails to comply with its decision.
- Complainants can use a favourable recommendation to apply pressure on a State to implement the Commission's recommendations. It can also be used as a tool for advocacy.

Benefits and limitations of the Commission

Submitting a communication to the African Commission COULD:

- raise awareness of human rights issues and put pressure on the State concerned;
- result in the Commission making a recommendation, including provisional measures, to address an issue and to put additional pressure on the State concerned;
- result in a settlement between you and the State involved;
- create laws to support domestic litigation;
- provide a channel for individuals, groups and NGOs to access the African Court.

Submitting a communication to the Commission CANNOT:

- result in a legally binding decision and force a State to comply with its decision;
- enforce legally binding judicial-type remedies that may be awarded, such as injunctions or monetary damages;
- immediately change domestic laws;
- provide a quick remedy (on average cases take between four to eight years).



About this brochure

This brochure provides a brief overview of the work of the African Commission on Human and Peoples' Rights (ACHPR) and its procedure for filing a complaint. Civil society organisations, workers, communities and groups of individuals who feel they have had their rights violated under the African Charter can use the African Commission to address their grievance. This brochure briefly explains how this can be done.

About the Human Rights & Grievance Mechanisms Programme

This brochure is part of a series of brochures on grievance mechanisms that is produced within SOMO's Human Rights & Grievance Mechanisms Programme. This project aims to improve the accessibility and effectiveness of non-judicial grievance mechanisms for stakeholders who are experiencing adverse impacts on their human rights as a result of business activities. For more information, go to www.grievancemechanisms.org.

About SOMO

SOMO is an independent, not-for-profit research and network organisation that promotes sustainable and fair global economic development and the elimination of the structural causes of poverty, environmental problems, exploitation and inequality.

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About Natural Justice

This brochure for the Human Rights & Grievance Mechanisms Programme is produced in partnership with Natural Justice – a not-for-profit legal organisation that works at the local, national, regional and international levels with a range of partners. Natural Justice strives to ensure that community rights and responsibilities are represented and respected broadly, and that rights set out in international fora are upheld at the lower levels.

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