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**ACERWC/8/4**

**GUIDELINES FOR THE CONSIDERATION OF COMMUNICATIONS PROVIDED  
FOR IN ARTICLE 44 OF THE AFRICAN CHARTER ON THE RIGHTS AND  
WELFARE OF THE CHILD**

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**I. INTRODUCTION**

1. Article 44 of the African Charter on the Rights and Welfare of the Child stipulates “the Committee shall be empowered to receive communications on any issue dealt with by this Charter from any individual, group or non-governmental organization recognized by the Organization of African Unity, by a Member State or by the United Nations.
2. Any communication to the Committee shall indicate the names and address of the author and shall be treated as “confidential”.
3. The Committee considers that the directives should be elaborated for effective application of these provisions in accordance with Article 74 of the Rules of Procedure of the Committee.

**CHAPTER I: GENERAL PROVISIONS**

**Article 1: Definition of Communications**

1. Under Article 44 of the African Charter on the Rights and Welfare of the Child, any correspondence or any complaint from a State, individual or NGO denouncing acts that are prejudicial to a right or rights of the child shall be considered as communication.

**Article 2: Recording of Communications**

1. Communications shall be recorded by the Committee’s Secretariat.
2. For that purpose, the Committee shall keep a register.

**Article 3: Summary and Circulation of Communications**

1. The Committee Secretary shall make a summary of all the Communications, depending on their subject. At each session, he/she shall circulate these summaries to Committee members.
2. An original file shall be kept for each Communication Summary. The complete text of any Communication brought to the attention of the Committee shall be made available to all members.

## **CHAPTER 2:        CONSIDERATION OF COMMUNICATIONS**

### **Article 1:    Conditions of Admissibility of Communications**

#### **I.        Authors of Communications.**

1.        Communications may be presented by individuals, including, the victimized child and/or his parents or legal representatives, witnesses, a group of individuals or non-governmental organizations recognized by the African Union, by a Member State or by any other institution of the United Nations system.

2.        The Author of the Communication shall specify either to have been a victim of violations of the rights spelt out in the Charter, or to act on behalf of a victim or of other eligible parties.

3.        A Communication may be presented on behalf of a victim without his/her agreement on condition that the author is able to prove that his/her action is taken in the supreme interest of the child. The victimized child who is able to express his/her opinions shall be informed of the communications presented on his/her behalf.

4.        The Committee shall decide by simple majority of members present and in conformity with the following regulations, on the admissibility or not of a Communication in conformity with the provisions of Article 44 of the Charter.

#### **II.        Conditions of Form**

1.        No Communication shall be considered by the Committee if:

- it is anonymous;
- it is not written;
- it concerns a State non-signatory to the Charter

2.        Notwithstanding the Committee may admit a Communication from a State non-signatory to the Charter in the overall best interest of the child. In so doing the Committee shall collaborate with other related Agencies implementing Conventions and Charters to which the non-signatory country is State Party.

#### **III.        Conditions of Content**

1.        In order to take a decision on the admissibility of a Communication, the Committee shall ensure that:

- a)        The Communication is compatible with the provisions of the Constitutive Act of the African Union or with the Charter on the Rights and Welfare of the Child;
- b)        The Communication is not exclusively based on information circulated by the media;

- c) The same issue has not been considered according to another investigation, procedure or international regulation;
- d) The author has exhausted all the available appeal channels at the national level or when the author of the Communication is not satisfied with the solution provided;
- e) The Communication is presented within a reasonable period after appeal channels at the national level have been exhausted.
- f) The wording of the Communication shall not be offensive,

## **Article 2: Procedure for consideration of Communications**

### **I. Transmission of Communications**

1. Communications shall be forwarded to Committee members three (03) months before each ordinary session.

### **II. Setting up of a Working Group**

1. The Committee may set up one or more working groups made up of three of its members who shall meet before its sessions or at any time decided by the Committee in order to consider the admissibility or not of a communication. The working group shall designate a Rapporteur.
2. When the Committee decides that a communication is admissible according to the terms of the Charter and these directives, it shall communicate, as soon as possible, through the Secretariat, its decision to the Author of the Communication.
3. The Author of the Communication may request the Committee to reconsider its decision by providing additional documents or facts.
4. After having decided on the admissibility of a Communication according to the terms of the Article 1, Chapter 2 of these directives, the Committee, Working Group or Rapporteur shall confidentially bring the Communication to the attention of the State concerned and shall request it to present an explanation in a written statement containing his observations within three (03) months.
5. When the Committee or Working Group has decided that a Communication is admissible according to the terms of the Charter and directives, this decision and all the other relevant documents shall, as soon as possible, be presented to the State party concerned through the Committee Secretary. The Author or Authors of the Communication shall also be informed of the decision.
6. The Committee shall decide by simple majority of members.

### **III. Order in which Communications are considered**

1. Except in cases that require promptness on a decision taken by the Committee or a Working Group, Communications shall be dealt with in the order in which they are received by the Secretariat.
2. Two or several Communications may be dealt with together if the Committee or Working Group so decides.
3. The Author of the Communication shall also be informed.
4. If at the end of the deadline the State Party concerned does not give an explanation, the Committee or Working Group may decide to proceed to consider the Communication.

### **IV. Provisional measures**

1. When the Committee decides to consider a Communication, it may forward to the State party concerned, a request to take provisional measures that the Committee shall consider necessary in order to prevent any other harm to the child or children who would be victims of violations.

### **V. Additional information, clarifications and observations**

1. The Committee or Working Group may request the State concerned, the Author or Authors of the Communication for additional information.
2. Within the period fixed by the Committee, the State party concerned shall present to the Committee, explanations by way of written statements indicating, if need be, the measures that it has been able to take in conformity with the Committee's directives. If necessary, the Committee may indicate the information requested from the State party concerned.
3. The Committee may request the presence of the Author or Authors of the Communications or their Representatives as well as the presence of the Representatives of the State concerned in order to give additional clarifications or answer questions on the validity of the Communication. Each time that one of the parties is thus invited, the other party shall be informed and invited to be present and make its observations if it so wishes. The absence of a party shall not hinder consideration of the case.
4. The Committee may send one of its members to conduct on the spot investigations.

### **VI. Incompatibilities**

1. A Committee member may not take part in the consideration of a Communication:
  - if the State Party on whose behalf he has been elected to the Committee is Party to the case;
  - if the member has any personal interest in the case or-

- if he has participated in any decision-making process concerning the case relating to the Communication.

## **VII. Removal or withdrawal of a member**

1. Any person who has reasons to doubt the impartiality of a member could request his removal.
2. The Committee shall request the person to explain the reasons for doubting a member's impartiality before taking a decision
3. If, for whatever reason, a member considers that he should not take part or continue to take part in the consideration of a Communication, he shall inform the Committee Chairperson.
4. After consultation with members, the Chairperson shall formally acknowledge the withdrawal and inform the member accordingly.

## **CHAPTER 3: COMMITTEE DELIBERATIONS**

### **Article 1: In Camera Session**

1. Committee Meetings at which Communications shall be considered according to the terms of Article 44 of the Charter shall be held in camera.
2. The Committee, Working Group or Rapporteur shall not make public any Communication, document or information relating to a Communication.
3. The Committee or Working Group responsible for considering a Communication may gather and validate information.

### **Article 2: Open Session**

1. Meetings at which the Committee shall have to consider general issues such as procedures for the implementation of Article 44 may be held in open session if the Committee so decides.
2. After considering the validity of a Communication, the Committee may reconsider a decision according to which a Communication is admissible in the light of the explanations or decisions presented by the State Party. However, before the Committee shall decide to reconsider this decision, the explanations or statements concerned should be forwarded through the Secretary, to the author or authors of the communication, who may present additional written information or observations within a period to be fixed by the Committee.
3. The Committee may request the presence of the author or authors or their representatives as well as the presence of representatives of the State Party concerned in order to give additional clarifications or answer questions on the communication's validity.

### **Article 3: Children's participation**

1. The Committee should take measures to ensure the effective and meaningful participation of the child or children concerned by the consideration of the validity of the communications and its author.
2. When the child is capable of expressing his opinions, a Committee member should hear him.

### **Article 4: Monitoring of decisions**

1. The Committee shall designate one of its members to be responsible for monitoring its decisions.
2. He/she shall regularly report to the Committee,
3. The Committee Chairperson shall inform the Chairperson of the African Union Commission,
4. The decisions of the Committee shall be submitted to the Assembly of Heads of State and Government of the African Union. The decisions shall be published after consideration by the Assembly and the State Parties concerned which shall ensure their dissemination in their countries, in conformity with Article 45, paragraphs 3 and 4 of the Charter