



African Committee of Experts on the
Rights and Welfare of the Child
(ACERWC)

**REVISED GUIDELINES
FOR THE CONSIDERATION
OF COMMUNICATIONS**

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

Table of Contents

Preamble	1
Definitions	1
SECTION I. Access to the Committee	3
SECTION II. Form and Content of communications	3
SECTION III. Preliminary Review and Processing of a Communication by the Secretariat	5
SECTION IV. Order of consideration of Communications	6
SECTION V. Rapporteur and working groups on Communications	6
SECTION VI. Joinder and disjoinder of Communications	6
SECTION VII. Provisional measures	7
SECTION VIII. Withdrawal and discontinuation	9
SECTION IX. Procedure on Admissibility	10
SECTION X. Procedure on the merits	12
SECTION XI. Procedure for hearing on Communications	13
SECTION XII. Failure of Respondent State Party to make its submissions	16
SECTION XIII. Amicable Settlements	16
SECTION XIV. Exemption or withdrawal of a Committee member	18
SECTION XV. On-site Investigation	19
SECTION XVI. Preliminary Objections	19
SECTION XVII. Interventions	20
SECTION XVIII. Deliberations on the merits of a Communication	21
SECTION XIX. Decisions on Communications	21
SECTION XX. Review of decisions of the Committee	23
SECTION XXI. Implementation of decisions of the Committee on communications	24
SECTION XXII. Legal Aid	25
Section XXIII. Final Provisions	26

Preamble

These Guidelines establish and regulate the procedure to be followed in dealing with communications submitted to the African Committee of Experts on the Rights and Welfare of the Child under Article 44 of the African Charter on the Rights and Welfare of the Child.

In the absence of provisions in these Guidelines or in case of doubt as to their interpretation, the Committee shall decide.

Definitions

For the purposes of these Rules:

“*Assembly*” means the Assembly of Heads of State and Government of the African Union.

“*African Children’s Charter*” or “*the Charter*” means the African Charter on the Rights and Welfare of the Child.

“*Bureau*” refers to the elected officers of the Committee in accordance with these Rules.

“*Chairperson*” means the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child.

“*Committee*” refers to of the African Committee of Experts on the Rights and Welfare of the Child.

“*Communication*” shall be understood to be any complaint received by the Committee in accordance with Article 44 of the African Charter.

“*Communiqué*” means any statement of the Committee released to the public.

“*Constitutive Act*” means the Constitutive Act of the African Union.

“*Executive Council*” refers to the Executive Council of the African Union.

“*Guidelines*” refers to these Guidelines for Consideration of Communications submitted under Article 44 of the African Charter on the Rights and Welfare of the Child.

“*Member State*” means a member state of the African Union.

“*Peace and Security Council*” means Peace and Security Council of the African Union

“*Secretariat*” refers to the Secretariat of the Committee.

“*Secretary*” refers to the Secretary of the Committee.

“*Session*” refers to the statutory meetings of the Committee. This includes Ordinary and Extraordinary sessions.

“*State Party*” means a Member State which has ratified the African Children’s Charter.

“*Specialised Organs*” refers to specialised organs put in place by the African Union or the United Nations.

“*Third Party*” refers to any other party other than the complaining or defending parties

SECTION I : ACCESS TO THE COMMITTEE

1) In accordance with article 44 of the African Children's Charter and these Guidelines, the following persons may be entitled to submit communications to the Committee either on their own behalf or on behalf of third parties, alleging violations of one or more of the provisions of the African Children's Charter:

- a. Any individual or group of natural or legal person including children ;
- b. Any State Party to the African Children's Charter ;
- c. Any intergovernmental or non-governmental organisation legally recognised in either one or more of the Member States of the African Union, a State Party to the African Children's Charter or the United Nations;
- d. Any specialised organ or agency of the African Union and United Nations.

2) A complainant submitting a communication may designate an attorney or other person to represent her/ him before the Committee in the communication itself or in a separate document.

3) A Communication may be presented on behalf of a child victim without her/his agreement on condition that the complainant is able to show that her/his action is taken in the supreme interest of the child. When possible, the child victim who is able to express her/his opinions shall be informed of the communication presented on her/his behalf.

4) (a) The Committee's jurisdiction is determined by the child's age at the time of the alleged violation.

(b) When a communication has been initiated before the Committee but is not concluded before the child's 18th birthday, the Committee retains the jurisdiction to continue to deal with the communication

SECTION II : FORM AND CONTENT OF COMMUNICATIONS

1) General Principle

The Committee shall consider a communication against a State Party alleging violations of the rights and welfare of the child enshrined in the African Children's

Charter only if the communication fulfils the requirements set forth in the African Children's Charter and these Guidelines.

2) Requirements of Form

i) No Communication shall be considered by the Committee if:

- a. it is anonymous;
- b. it is not written in one of the official languages of the Committee;
- c. it concerns a State non-signatory to the Charter
- d. it is not duly signed by the complainant or her/his representatives

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

3) Requirements of content

i) A Communication addressed to the Committee shall contain the following information:

a. Clear particulars of the complainant or complainants and party or parties against whom such complaint has been made.

b. Where possible, the name of the victim or victims, in case they are not the complainant or complainants, and of any public official or authority who has taken cognisance of the fact or situation alleged;

c. Whether or not the complainant wishes that his or her identity or the identity of any victim or victims be withheld from the State Party against which the communication is brought;

d. The State the complainant considers responsible, by act or omission, for the violation of any of the rights and welfare of the child recognised by the African Children's Charter;

e. An account of the act or situation that is the subject matter of the complaint, specifying the place and date of the alleged violations;

f. Where possible, the provision of the African Children's Charter allegedly violated;

- g. The remedies sought by the complainant to redress the alleged violations
- h. Any steps taken to exhaust domestic remedies, or the impossibility or ineffectiveness of doing so as provided under Section IX 1(d) of these Guidelines;
- i. An indication of whether the Communication has been submitted to another international settlement procedure as provided in Section IX (c) of these Guidelines.
- j. The address for receiving correspondence from the Committee and, if available, a telephone number, facsimile number, and email address;

SECTION III : PRELIMINARY REVIEW AND PROCESSING OF A COMMUNICATION BY SECRETARIAT

1) A Communication addressed to the Committee shall be submitted to the Secretariat which shall carry out a preliminary review and processing of the Communication as follows:

- a. Receive the communication, assign a title and number, register it, record the date of receipt on the Communication itself and acknowledge receipt to the complainant within 21 days of the date of receipt;
- b. The Secretary shall ensure that Communications submitted to the Committee meet the requirements of form and content provided under Section II of these Guidelines.
- c. Where the communication does not meet the requirements of form and content provided under Section II of these Guidelines, the Secretariat shall request that the complainant or her/his representative to comply with the said Rules and furnish information within 30 days of the request.
- d. Where the Secretariat has any doubt as to whether the requirements for a communication have been met, it shall consult the Chairperson.
- e. Where the Secretary is satisfied that the formalities are met, it shall transmit the Communication to the Committee.

2) Where a Communication reveals serious or massive violations or in cases of emergency, the Secretariat shall immediately notify the Committee for consideration of any provisional measure in accordance with Section VII of these Guidelines.

SECTION IV: ORDER OF CONSIDERATION OF COMMUNICATIONS

Unless otherwise decided by the Committee, Communications shall be considered in the order in which they are received by the Secretariat.

SECTION V: RAPORTEURS AND WORKING GROUPS ON COMMUNICATIONS

1) The Committee may appoint a Rapporteur for each Communication from among its members.

2) The Committee may also establish one or more working groups as it deems necessary for consideration of questions of admissibility and the merits of any communication.

3) Rapporteurs and Working Groups designated under this section shall examine each Communication assigned and make recommendations to the Committee.

SECTION VI: JOINDER AND DISJOINDER OF COMMUNICATIONS

1) Where two or more communications against the same State Party address similar facts, involve the same persons or reveal the same pattern of violations, the Committee may, on its own motion or at the request of one of the parties, decide that the communications be joined and considered together as a single communication.

2) Notwithstanding paragraph 1 above, the Committee may decide not to join the Communications if it is of the opinion that the joinder will not serve the interest of justice.

3) If a communication sets forth distinct facts, or refers to more than one victim or alleged violations not interconnected in time and place, the Committee may, on its own motion or at the request of one of the parties, decide that the claims made may be divided and considered separately as may be appropriate.

4) The Committee may also, where it deems appropriate, decide to disjoin communications joined pursuant to paragraph 1 above.

5) In the situations provided for in paragraphs 2, 3 and 4 of this Section, the Secretariat shall give written notification of the action taken on the Communication to the complainant.

SECTION VII PROVISIONAL MEASURES

1) General Provisions

(i) Where the Committee considers that one or more Communications submitted to it or pending before it reveal a situation of urgency, serious or massive violations of the African Children's Charter and the likelihood of irreparable harm to a child or children in violation of the African Children's Charter may, either on its own initiative or at the request of a party to the proceedings, request the State Party concerned to adopt Provisional Measures to prevent grave or irreparable harm to the victim or victims of the violations as urgent as possible.

(ii) After the request for Provisional Measures has been transmitted to the State Party, the Committee shall transmit a copy of the letter requesting Provisional Measures to the victim, the Assembly, Peace and Security Council and the African Union Commission.

2) Determination on provisional measure

(i) In considering a request to a State Party to adopt provisional measures, the Committee shall take the following factors into account:

- a. The gravity and urgency of the situation;
- b. The irreparable nature and imminence of the harm in question;
- c. Whether the situation or harm has been brought to the attention of the relevant authorities or the reasons why it has not been possible to do so;
- d. Whether the potential beneficiary or beneficiaries of the precautionary measures can be individually or collectively identified as the case may be; and
- e. Whether the consent of the potential beneficiary or beneficiaries of the provisional measures has been obtained, if necessary under the circumstances

(ii) If the Committee is not in session at the time that the request for Provisional Measures is received, the Chairperson, in consultation with the Bureau of the Committee shall take the decision and shall so inform the members of the Committee.

(iii) The decision on Provisional Measures shall clearly state the particulars of the potential beneficiary or beneficiaries of the Measures, the reasons warranting Provisional Measures and the particular nature of Measures sought to be adopted by the State Party concerned.

(iv) The Committee shall make its decision on Provisional Measures in shortest possible time which shall not exceed a maximum of 21 days from the time the matter was brought to its attention.

(v) The request for Provisional Measures by the Committee and their adoption thereof by a State Party shall be without prejudice to the any determination on the merits of the Communication.

3) Verification of information

(i) Prior to the adoption of provisional measures, the Committee may, where it deems appropriate, request relevant information from the State party concerned or conduct on-site investigation in order to verify the pertinent facts.

(ii) Such verification shall be resorted to in as speedy as possible unless the urgency of the situation warrants the immediate granting of the measures.

4) Monitoring and follow up of provisional measures

(i) The Committee shall request the state party concerned to report back on the implementation of the Provisional Measures adopted. Such information shall be submitted within 15 days of the receipt of the request from the Committee.

(ii) The Committee may also invite the Complainant and any other relevant party to provide it with information on any issue relating to implementation of the Provisional Measures adopted.

- (iii) The Committee shall periodically evaluate whether it is necessary to maintain any provisional measures undertaken by a State Party or to adopt follow up measures.
- (iv) In the event of non-compliance with Provisional Measures by the State concerned, the Committee shall take all necessary steps as it deems appropriate.

5) Report and Publicity of decision on provisional measures

- i. The Committee shall disclose any Provisional Measures adopted in its Annual Report submitted to the Assembly pursuant to Article 45 (2) of the African Children's Charter.
- ii. Without prejudice to confidentiality pursuant to Article 43(2) of the African Children's Charter, the Committee may, where it deems appropriate, release a communiqué on the Provisional Measures adopted.

SECTION VIII: WITHDRAWAL AND DISCONTINUATION

1) Withdrawal from Proceedings

- i. A complainant may at any stage in the consideration of a Communication withdraw the Communication by notifying the Committee of the withdrawal in writing.
- ii. The Committee shall consider the notification of withdrawal and may either discontinue the consideration of the communication as it deems appropriate or may, on its own initiative or at the request of 3rd party concerned, continue to consider the communication in the interest of protecting the rights and welfare of the child or children concerned provided that the requirements set out in the African Children's Charter and in these Guidelines are met.

2) Discontinuation of Communications

- i. At any time during the consideration of a communication, the Committee may decide to discontinue the consideration on the basis that:
 - a. The grounds for the communication do not exist or subsist; or;
 - b. The information necessary for the adoption of a decision is unavailable;
 - c. The lack of prosecution by the complainant.

ii. Prior to discontinuing the consideration of a Communication, the Committee shall notify the parties of its intention to discontinue consideration and request the parties to submit their response to the Committee's intention within 30 days of the receipt of the notice.

iii. Upon the expiry of the 30 days period, the Committee shall make a final decision on discontinuing the consideration of a Communication taking into account any responses received from the parties.

SECTION IX: PROCEDURE ON ADMISSIBILITY

1) Conditions of admissibility

In order to take declare a Communication admissible, the Committee shall ensure that:

a) The Communication is compatible with the provisions of the Constitutive Act of the African Union and the African Children's Charter;

b) The Communication is not exclusively based on information circulated by the media or is manifestly groundless;

c) The Communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter;

d) The Communication is submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective;

e) The Communication is presented within a reasonable period after exhaustion of local remedies at the national level; and

f) The Communication does not contain any disparaging or insulting language

2) Determination of Admissibility

i. For the purpose of determining the admissibility of a Communication, the Committee shall, without prejudice to anonymity, transmit a copy of the Communication to the respondent State Party.

- ii. Where necessary the Committee may transmit the copies of the Communication to the State Party whose citizen is a victim of the alleged violation, if different from the respondent State Party and to any other concerned party whose intervention is considered relevant pursuant to Section XVII of these Guidelines.
- iii. The identity of the complainant or victim shall not be revealed in the presence of an express request of anonymity.
- iv. The State Party shall submit its response within 60 days from the date of the request from the Secretariat. In cases where the State Party is unable to do so, it may request an extension any time before the expiry of the 60 days period. Provided the request is reasonably founded, the Committee may grant the State party an extension hereunder that shall not exceed 30 days and shall not be more than once.
- v. In cases of where there are reasonable grounds to believe that the life or personal integrity of a child or children is in danger, the Committee shall request the promptest reply from the State Party, using the necessary means it considers the most expeditious for this purpose.
- vi. Upon receipt of the response of the State Party, the Secretariat shall send a copy to the complainant within 14 days of the receipt. The complainant may submit observations on the response of the State Party to the Committee within 30 days of the receipt of the respondent state's submissions. In cases where the complainant is unable to do so it may request for an extension before the expiry of the 30 days period. Provided the request is reasonably founded, the Committee may grant the complainant an extension hereunder which shall not exceed 14 days and shall not be more than once.
- vii. Prior to deciding upon the admissibility of a Communication, the Committee may, where it deems necessary, invite the parties to submit additional information either in writing or orally. Any additional written observations submitted by a party shall be transmitted to the other party.

3) Decision on Admissibility

- i. Having considered all the facts, evidence and observations made by the parties, and report of Rapporteurs or Working Groups as the case may be, the Committee shall make a decision on the admissibility or otherwise of the Communication within 90 days of conclusion of deliberation on of admissibility.
- ii. The Committee shall provide parties written decisions detailing the reasons for its decisions.
- iii. The adoption of a decision on admissibility shall be without prejudice to the merits of the Communication.
- iv. The decision shall be included in the Annual Report of the Committee to the Assembly.
- v. Where necessary, the Committee may defer its decision on admissibility until the final determination of the merits of the Communication, provided that the Committee shall formally notify the parties of its decision to defer its decision on admissibility until the final determination of the merits.

SECTION X: PROCEDURE ON THE MERITS

- 1) Following the adoption of a decision on the admissibility of a communication, the Committee shall proceed to consider the Communication on the merits. The Committee shall request the respondent State Party to submit its arguments and evidence on the merits of the communication within 60 days.
- 2) The Committee may, prior to consideration of the merits of a Communication, set a time period for the parties to express their interest in reaching an amicable settlement in accordance with the relevant provisions of these Guidelines.
- 3) Any written statements submitted by the State Party concerned shall be immediately transmitted to the Complainant, who may submit additional information or observations within 30 days.
- 4) The Committee shall consider request for extension of time submitted by the parties concerned before the expiry of the original period under paragraph (2) and

(3) above and may grant an extension upon reasonable grounds, provided that such extension shall not exceed 30 days and shall not be granted more than once per party.

SECTION XI: PROCEDURE FOR HEARING ON COMMUNICATIONS

1) General Provisions

- i. The Committee, if it deems it necessary, may conduct a hearing on a Communication where the parties will be invited to make oral submissions before it.
- ii. The Committee may, if it deems it necessary, on its own motion or at the request of one of the parties conduct hearing of witnesses or experts.
- iii. Such hearings may be conducted in open or closed session as the Committee deems it appropriate depending on the circumstances of each communication.

2) Request for a hearing

- i. A party requesting a hearing, shall do so at least ninety (90) days before the beginning of the session in which the Communication is going to be considered.
- ii. The Rapporteur or Working Group, if any, or in the absence of such designation, the Chairperson shall decide upon the request in consultation with the Bureau of the Committee.
- iii. The Secretary shall inform both parties of the decision on the granting of a hearing within 15 days of the decision.
- iv. If the request for a hearing is accepted, the notification of the hearing shall include the dates and venue of the session, and period of the session during which the hearing is likely to take place.

3) Closed hearings

- i. If the Committee decides to hold hearings in closed sessions, no person shall be admitted, other than:
 - a) The parties to the Communication or the representatives and advisors

duly mandated;

b) Any person being heard by the Committee as a witness or as an expert;

c) Any person whom the Committee may decide to invite under Section XI Paragraph 5(ii).

ii. When it considers it in the interest of the proper conduct of a hearing, the Committee may limit the number of parties' representatives or advisers who may appear.

4) Hearing of parties to the Communication

i. The parties shall inform the Committee at least ten days before the date of the opening of the hearing of the names and functions of the persons who will appear on their behalf at the hearing.

ii. The Chairperson or any member delegated by the Chairperson shall preside over the hearing, and shall verify the identity of any persons before he/she is heard.

iii. Any member of the Committee may put questions to the parties or to the persons heard with the permission of the Chairperson.

iv. Parties to the Communication or their representatives may, with the permission of the Chairperson, put questions to any person heard.

v. During hearings, the Committee shall permit oral presentations by the parties on new or additional facts or arguments or in answer to any questions that it may have concerning all issues relating to the Communication.

vi. During the hearing of a Communication in which amicus curiae brief has been filed, the Committee, where necessary, shall permit the author or the representative to address the Committee.

5) Hearing of witnesses, experts and other persons

i. The Committee shall determine, at its own initiative, or at the request of one of the parties, to call independent experts and witnesses of the parties to the Communication or other persons whom it considers necessary to hear in a given case. A request to call a witness by one of the parties shall not be rejected unless the Committee has good reasons to believe that such a request constitutes an abuse of process.

ii. When the Committee determines to call any witness, expert or other person, the Secretary shall send a written call to the witness or expert concerned. The invitation to the hearing shall indicate:

- a) The parties to the Communication;
- b) A summary of the facts or issues in relation to which the Committee desires to hear the witness or expert.

iii. Any such person may, if they do not have sufficient knowledge of the working languages of the Committee, be authorised to speak in any other language to be interpreted in one of the Working Languages of the Committee.

iv. The Chairperson or any member delegated by the Chairperson shall preside over the hearing, and shall verify the identity of the witnesses or experts or other persons appearing for a hearing. V. Prior to proceeding to the hearing the witnesses or experts or other persons appearing for a hearing, the Chairperson or the presiding member of the Committee shall remind them to make truthful statements and provide all relevant information in accordance with the best of their knowledge, findings and sincere belief.

6) Children's participation

i. The Committee shall take measures to ensure the effective and meaningful participation of the child or children concerned by the consideration of the Communications.

ii. When the child is capable of expressing his opinions, he should be heard by the Committee through a child friendly process.

7) Protection of persons participating in hearings

The State Party to the Communication shall make an undertaking not to victimise or persecute the Complainant and/or any person representing them, the witnesses or experts or experts or carry out any reprisals against their family members, because of their statements or opinions given before the Committee.

8) Record of hearings

- i. The proceedings hearings shall be recorded and such recordings shall be conserved in the archives of the Committee. The Secretary shall also be responsible for the production of verbatim records of hearings before the Committee.
- ii. Such records are internal working documents of the Committee. If a party to the Communication so requests, the Committee may provide a copy of such records unless, in the view of the Committee, doing so could create a danger to persons heard.

SECTION XII: FAILURE OF RESPONDENT STATE PARTY TO MAKE ITS SUBMISSIONS

- 1) In the absence of any submissions from the respondent State Party within the respective periods set under these Guidelines, the Committee shall proceed to the examination of the question of admissibility or the merits based on the submissions of the complainant.
- 2) The Committee may on its own motion conduct further investigation or request the Complainant to submit further information as may be appropriate in order to make pertinent decision.

SECTION XIII: AMICABLE SETTLEMENTS

1) General Principles

- i. Parties to a communication may settle their dispute amicably any time before the Committee decides on the merits of the Communication.
- ii. In all cases of an amicable settlement, the terms of settlement reached must be based on respect for the rights and welfare of the child recognised by the African Children's Charter and other applicable instruments.
- iii. Any amicable settlement reached outside the auspices of the Committee, shall be reported to the Committee which shall conclude the consideration of the Communication by before the Committee.

iv. The Committee may, having regard to its mandate under the African Children's Charter, decide to proceed with consideration of the Communication notwithstanding the notice of such amicable settlement.

2) Amicable settlement under the auspices of the Committee

i. The Committee, on its own initiative or at the request of any of the parties to a Communication, may promote amicable settlement guided by the best interest of the child principle and on the basis of respect for the rights and welfare of the child recognised in the African Children's Charter and other applicable instruments.

ii. Any process of amicable settlement shall be initiated and continued on the basis of mutual consent of the parties to the Communication.

iii. The Committee may appoint one or more of its members to facilitate negotiations between the parties for the amicable settlement of a Communication and shall render its good office at the disposal of the parties for facilitating amicable settlement.

iv. The Committee may terminate its facilitation of an amicable settlement upon the following grounds:

a. If it finds that the matters raised in the Communication are not susceptible to such an amicable resolution;

b. If any of the parties does not consent to an amicable settlement;

c. If any of the parties chooses not to continue with an amicable settlement;

d. If any of the parties displays an unwillingness to reach an amicable settlement based on respect for children's rights and welfare.

e. If the subject matter of the Communication involves serious and massive violation of children's rights

v. Where an amicable settlement is reached, the Committee shall adopt a report giving a brief statement of the facts of the Communication, the issues identified for determination by all parties and the terms of settlement reached. Provided that the Committee shall verify whether the victim of the alleged violation or, as the case may be, his or her representative has consented to the terms of settlement.

vi. The report on the amicable settlement in sub-rule 5 of this Rule shall be transmitted to the parties whose respective representatives shall formally endorse it by their signatures as a true reflection of the settlement reached and return same to the Secretariat of the Committee within 14 days of receipt of the report.

vii. The Secretariat of the Committee shall submit the final report with the endorsement of the parties to the Committee which shall adopt it and authorise its publication by the parties subject to article 45(2), (3) and (4) of the African Children's Charter.

viii. If no amicable settlement is reached, the Committee shall continue to process the Communication in accordance with these Rules of Procedure.

SECTION XIV: EXEMPTION OR WITHDRAWAL A COMMITTEE

1) A member of the Committee shall not be present and take part in the consideration of a Communication if he or she:

- a. is a national of the State party concerned;
- b. has any personal interest in the Communication;
- c. has participated in any capacity in any decision at the national level in relation to the communication; or
- d. has publicly expressed opinions that might be interpreted as reflecting lack of impartiality with respect to the communication.

2) Any question that may arise under paragraph I above shall be decided by the Committee without the participation of the member concerned.

3) If for any reason, a member of the Committee considers that he or she or she should not take part or continue to take part in the consideration of a communication, he or she shall inform the Chairperson of the Committee in writing of his or her decision to withdraw from the consideration of the Communication.

4) Any member of the Committee who does not take part in the consideration of

a Communication under this Section shall not form part of the quorum for the consideration of the Communication.

SECTION XV: ON-SITE INVESTIGATION

- 1) If it deems it necessary or advisable for the determination of a Communication at any stage before determination on the merits, the Committee may carry out an on-site investigation in accordance with article 45 of the African Children's Charter.
- 2) The Committee shall request the State Party concerned to furnish it with all the necessary facilities on the State Party's territory necessary for the effective conduct of the investigation.

SECTION XVI :PRELIMINARY OBJECTIONS

- 1) A party to a Communication who intends to raise a preliminary objection at the stage before the Committee takes a decision on the merits of the Communication, shall do so in writing not later than 30 days after receiving the other party's submissions on admissibility or on the merits in accordance with the provisions of these Guidelines.
- 2) The Committee shall submit a copy of the preliminary objection to the other party within 14 days of the receipt of the objection and request the party to submit its written response within 30 days of such request.
- 3) Where the Committee does not receive response to a preliminary objection under paragraph 2 of this Section, it shall proceed to rule on the merits of the objection as presented and on the basis of any other relevant information available to the Committee.
- 4) The Committee shall first consider and rule on any preliminary objection before considering any other matters relating to a Communication.

SECTION XVII: INTERVENTIONS

1) Third party intervention

- i. The Committee may decide to solicit or accept interventions by parties other than the complainant and the respondent state that it considers will provide it with information relevant to making a decision on a communication.
- ii. A person seeking intervention shall submit an application requesting permission to intervene. The application shall state:
 - a. the names of the applicant or applicant's representatives
 - b. the interest of the applicant in the Communication
 - c. the object of the intervention
 - d. A summary of the supporting documents to be submitted
- iii. The Committee shall consider the application for intervention and respond formally to the applicant on its decision within 30 days of receipt of the application.
- iv. Where the Committee approves an application for intervention, the applicant shall submit her/his submissions within 60 days of the Committee's formal response to the applicant.

2) amicus curiae

- i. The Committee may receive amicus curiae briefs from natural and legal persons other than the parties to a Communication for the purposes of providing the Committee with relevant information relating to the law, facts, arguments or evidence in a Communication.
- ii. A person seeking to submit an amicus curiae brief shall submit an application to the Committee through the Secretariat. The application shall indicate:
 - a. The nature of the applicant's interest in the communication; and
 - b. The focus of the amicus curiae brief as regards the law, facts, arguments or evidence in the communication.
- iii. The Committee shall consider the application to submit an amicus curiae brief and respond formally to the applicant on its decision within 30 days of receipt of the application.

iv. Where the Committee approves an application to submit an amicus curiae brief, the applicant shall submit the brief in any of the working languages of the Committee as directed by the Committee within 60 days of the Committee's formal response to the applicant.

SECTION XVIII: DELIBERATIONS ON THE MERITS OF A COMMUNICATION

1) Upon the receipt of all arguments and evidence on the merits from the parties, the conduct of any hearings or any on-site investigations, the Committee shall deliberate on the merits of a communication and prepare a Report on its deliberations.

2) The Report under paragraph 1 above on the Committee's deliberations shall cover its examination of the arguments and evidence presented by the parties, information obtained during hearings and on-site investigations. The Committee may also, on its own initiative, take into account any other information that is a matter of public knowledge relevant to the Communication.

3) The Report shall include names of the Chairperson of the Committee, the Rapporteur or members of Working Group for the communication, if any, the members of the Committee participating in the deliberations and any member of the Committee who did not participate in the consideration of the communication for reasons of incompatibility, the decision reached and any dissenting or separate opinion, and any statements which in the Committee's view should be included in the minutes.

4) The Committee shall deliberate in closed session and all aspects of its deliberations shall remain confidential.

SECTION XIX: DECISION ON COMMUNICATIONS

1) The decision on a communication

i. Upon the conclusion of the consideration of and deliberations on a Communication,

the Committee shall adopt a decision on the Communication within 90 days from the date of completion of deliberations.

ii. The decision adopted by the Committee shall contain the following information:

- (a) The title of the Communication;
- (b) The date on which decision is delivered;
- (c) The identity of the parties or their representatives subject to requirement of anonymity;
- (d) A Summary of the proceedings
- (e) A summary of the submissions of the parties
- (f) The relevant steps taken by the Committee in its consideration of the communication including any precautionary measures adopted, on-site investigations conducted and any hearings held;
- (g) The relevant facts and law examined
- (h) reasoned decision on the admissibility of the Communication with full analysis of facts and law;
- (i) The reasoned decision on the merits with full analysis of facts and law;
- (j) The conclusions of the Committee
- (k) recommendations of the Committee on actions to be taken by the parties to remedy the violations found by the Committee;
- (l) The operative aspects of the decisions;
- (m) The signature of the Chairperson

2) The Secretariat shall notify the parties of its decision within 30 from the date of decision without prejudice to Paragraph 5 of this Section.

3) A decision on a Communication adopted by the Committee shall be included in the Committee's Report to the Assembly of the African Union.

4) A decision on a Communication adopted by the Committee shall only be made public by the Committee and the parties after the Assembly of the African Union has considered and adopted the Committee's Report in accordance with article 45 (3) of the African Children's Charter. Upon the adoption of the Committee's Report by the Assembly, the Secretariat of the Committee shall notify the parties to a

Communication within 30 days of the authorisation to publish and disseminate the decision on the Communication. The Secretariat shall also publicise the decision on the Committee's website.

5) The implementation of the recommendations of the Committee in its decision on a Communication by parties upon receipt of decision shall not be affected by the prohibition on publication as provided under this Rule.

SECTION XX: REVIEW OF DECISIONS OF THE COMMITTEE

1) The Committee, acting on its own initiative or at the written request of a party to a Communication, may review its decision on the admissibility or merits of a Communication.

2) In determining whether to review its decision, the Committee shall satisfy itself of any of the following:

a. The discovery of some decisive fact or evidence, which was not known to the Committee and the party requesting the review, provided such ignorance was not due to negligence;

b. The application for review is made within six months of the discovery of the new fact; unless the best interest of the child or children concerned

c. The Committee erred in its application and interpretation of the African Children's Charter or any other relevant instrument in a manner that undermines fairness, justice and protection of the rights and welfare of the child; or

d. The existence of any other compelling reason the Committee may deem appropriate or relevant to justify a review of its decision with a view to ensuring fairness, justice and protection of the rights and welfare of the child.

3) The application for review by a party shall contain the information necessary to show the condition and shall be accompanied by all relevant supporting documents.

4) Upon instructions of the Committee, the Secretary shall transmit a copy of the application for review to any other concerned party and shall invite them to submit written observations, if any, within the time limit set by the Committee.

5) No application for review may be made after three years from the date of notification of the decision.

6) An application for review shall not interrupt implementation of Committee's decisions by the State Party concerned unless the Committee decides otherwise.

SECTION XXI: IMPLEMENTATION OF DECISIONS OF THE COMMITTEE ON COMMUNICATIONS

1) Time limit for reporting on implementation

i. A State Party to a Communication found by the Committee to have violated any of the articles of the African Children's Charter shall report to the Committee all measures taken to implement the decision of the Committee within 180 days from the date of receipt of the Committee's decision.

ii. If the State Party does not submit a report as required by this Rule or provide the Committee with any other information on its implementation of the Committee's decision within the period set in sub-rule 1 of this Rule, the Committee shall formally notify the State Party of this breach and request it submit the report within 90 days from the date of the Committee's notification.

iii. If at the expiry of the 90 days from the date of reminder, the State Party does not submit a report, the Committee shall refer the matter to the Assembly of the African Union for appropriate intervention on the matter.

2) Follow-up on implementation of decisions

i. The Committee shall appoint a Rapporteur for each communication for the purpose of monitoring the implementation of the Committee's decision by the State Party concerned.

ii. The Rapporteur for a Communication shall monitor the measures taken by the State Party concerned to give effect to the Committee's recommendations made in

its decision on the communication.

iii. The Rapporteur for a communication may make such contact as is necessary with the relevant persons and institutions in the State Party concerned and take such action as may be appropriate to ascertain the measures adopted by the State Party concerned in implementing the recommendations of the Committee made in its decision on the communication.

iv. At each ordinary session of the Committee, the Rapporteur for a Communication shall present a report during the public session on the progress of the State Party concerned in implementing the Committee's decision and make any necessary recommendations for improving the State's implementation of the decision.

v. Notwithstanding the provisions of Section XX(3) of these Rules of Procedure, the Committee shall draw the attention of the Permanent Representatives Committee, and the Executive Council, to any incidents of non-compliance with the Committee's decision on a communication by the State Party concerned.

XXII: LEGAL AID

1) The Committee may, either at the request of the complainant or at its own initiative, facilitate access to free legal assistance to the complainant in the interest of justice and within the resources available.

2. Free legal aid shall only be facilitated where the Committee is convinced that:

a) It is essential for the proper discharge of the Committee's duties, and to ensure equality of the parties before it; and

b) The complainant has no sufficient means to meet all or part of the costs involved.

3. In case of urgency or when the Committee is not in session, the Chairperson may exercise the powers conferred on the Committee under this Section. As soon as the Committee is in session, any action that has been taken under this paragraph shall be brought to its attention for confirmation.

SECTION XXIII FINAL PROVISIONS

1) Interpretation

The Committee shall have the mandate to interpret the present Guidelines In conformity with the provisions of the African Children's. For the purpose of the interpretation of these rules, the headings are for reference purposes only and do not form part of the Rules.

2) Amendments

These Guidelines may be amended the Committee in conformity with the relevant provisions of the African Children's Charter. Any proposal for amendment shall be adopted by a two-majority decision of present and voting at a session where the proposed amendments are scheduled to be considered.

3) Non-retroactivity

The present Guidelines shall not have any retrospective effect.

4) Entry into Force of the Guidelines

The present Guidelines shall enter into force three months after their adoption by a simple majority of members of the Committee present and voting at a session where the Guidelines are scheduled to be adopted.



AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD



African Committee of Experts on the Rights and Welfare of the Child
African Union Commission
P.O.Box: 3243 - Roosevelt Street
Old Airport Area
W21K12 Addis Ababa

Contact:

Tel: +251 11 551 7700

Fax: +251 11 553 3616

www.acerwc.org