



# Criminalization of Indigenous Peoples and Continuing Impunity

A Reference Manual  
on **Documentation,**  
**Monitoring and**  
**Advocacy**



# **Criminalization of Indigenous Peoples and Continuing Impunity:**

**A Reference Manual on Documentation, Monitoring and Advocacy**

Mary Ann Manja Bayang  
and  
Helen Biangalen-Magata

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Published by

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## Preface

*“I continue to receive reports of escalations in conflicts and continued militarization on indigenous peoples’ ancestral lands; displacements, dispossessions and violence; peaceful mobilizations that are countered with attacks, criminalization and harassments; and the continued, systematic discrimination against indigenous peoples and the denial of their identity and rights. These violations are part of the everyday lives and struggles of indigenous peoples and indigenous human rights defenders across the world.”*

– Statement of Ms. Victoria Tauli-Corpuz, at the 17th Session of the United Nations Permanent Forum on Indigenous Issues, 18 April 2018

*“The race to control and exploit the remaining resources in the name of development and skewed conservation, resulting in killings and criminalization of indigenous peoples, needs global condemnation and concerted action to make states and corporations accountable and to realize peace, justice and dignity for all.”*

– Joan Carling, when she received the 2018 UN Champions of the Earth Award

### **HOW DID THE BOOK CAME TO BEING? WHAT INSPIRED IT?**

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Systemic violation of human rights of indigenous peoples continue to happen in many countries across the globe today. According to the Indigenous Peoples Rights International, this violation *renders indigenous peoples powerless and diminishes opportunities and spaces to assert and protect their individual and collective rights and to fight against inequality, racism and discrimination.*

The Indigenous Peoples Rights International (IPRI) was born in 2019 to protect Indigenous Peoples rights, particularly to unite and amplify the call for justice to Indigenous Peoples victims of criminalization and impunity. The idea of a reference manual that provides necessary

information needed for reporting, documentation, monitoring and advocating for Indigenous Peoples' rights in the context of criminalization and impunity has been a long standing vision. But in 2020, due to COVID-19 imposed lockdowns, the vulnerabilities of Indigenous Peoples were highlighted and the need for a comprehensive reference of different grievance mechanisms available in different regions, became more urgent.

This reference manual came to being to respond to the need to reduce and prevent violation against and criminalization of Indigenous Peoples by equipping them with the knowledge to access grievance mechanisms and conduct effective advocacy actions. On the one hand, there is a need to raise the level of awareness and accountability of States and other actors to uphold Indigenous Peoples' rights. But on the other end of the spectrum, Indigenous Peoples also need to know how and where to report to when and if violence happen to them or in their communities.

## **THE MANUAL IS DIVIDED INTO TWO THEMES**

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The first one is a discussion on Indigenous Peoples' situation in the context of the protection of their right in the midst of criminalization and impunity. It also delved into discussion of measures to prevent and protect Indigenous Peoples from criminalization, looked at intersectionality of criminalization with gender and age. There is a thorough discussion on the rights of Indigenous Peoples under international law and other relevant international human rights instruments and how these relate to the duty of the State to protect Indigenous Peoples' rights.

The second part of the book provides practical guide on monitoring and documentation of Criminalization of and Impunity against Indigenous Peoples. It also shares advocacy strategies against criminalization, impunity and violence that Indigenous Peoples and communities experiencing criminalization of, violence and impunity may learn from.

Here is hoping that as we strive for the recognition, protection and fulfillment of Indigenous Peoples rights, this manual could help provide background, insights and practical tips in our advocacy work. Also, here is hoping we would never have to need to use it, in the future.

## How to Use This Manual

The United Nations (UN) reports that “despite all the positive developments in international human rights standard-setting, Indigenous Peoples continue to face serious human rights abuses on a day-to-day basis.”<sup>1</sup> This is concurred by former UN Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP) Victoria Tauli-Corpuz who expressed concern on the drastic increase in attacks and acts of violence against, criminalization of and threats aimed at Indigenous Peoples, particularly those arising in the context of large-scale projects.<sup>2</sup>

### **THE OBJECTIVES AND CONTENTS OF THE MANUAL**

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This manual was developed to respond to the increasing need of Indigenous Peoples to amplify their work and advocacy on access to justice at the regional and international level. Specifically, this manual aims to help Indigenous Peoples’ organizations and communities to:

1. Raise Indigenous Peoples’ awareness in relation to the respect, recognition and protection of their rights, and on related mechanisms at the global and regional levels for access to justice that they can avail of in cases of criminalization of Indigenous Peoples and violation of their rights;
2. Equip Indigenous Peoples, advocates and organizations with basic skills in monitoring, documentation, and reporting of cases of human and collective rights violations, criminalization and related issues;
3. Develop and strengthen the skills of Indigenous Peoples in advocating for their rights in both formal and informal platforms especially at the regional and global levels.

The Manual has three parts. The first is an introduction of Indigenous Peoples and their rights, and a brief summary and overview of the Indigenous Peoples’ economic and social conditions and how their rights are addressed globally. It also maps out the different international and regional human rights instruments that articulate Indigenous Peoples’ rights and provides an introductory review on what criminalization means for Indigenous Peoples. This part of the Manual provides the impetus for the discussion on Indigenous Peoples’ rights in the context of criminalization.

The second part of the Manual aims to share basic skills and provide practical guide on monitoring, documentation and reporting of criminalization of Indigenous Peoples and prevailing impunity. The third part maps out redress mechanisms and advocacy strategies and opportunities for Indigenous Peoples in the regional and international levels. It also provides actual case examples and easy instructions to guide Indigenous Peoples in their advocacy. The Manual also provides additional materials for further references.

## USING THE MANUAL

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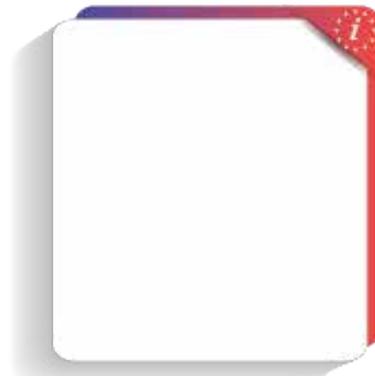
The Manual can be used by indigenous rights advocates and defenders, Indigenous Peoples' and support organizations who are working on Indigenous Peoples rights, particularly on criminalization, impunity, violence and accessing justice around the world. The Manual provides a comprehensive reference on Indigenous Peoples' rights that provides context to criminalization. Apart from global trends and emerging situations of Indigenous Peoples, there are also several regional examples and country contexts that provide deeper analysis of certain topics.

Please take note that while there are examples provided in many of the topics, these may not be exhaustive and may not necessarily be representative of all the cases of Indigenous Peoples worldwide. Community facilitators who use this Manual as reference are then encouraged to look into context-specific examples that would accompany discussions, as needed.

Different countries have different legal constitutions or policies on Indigenous Peoples. Hence, there are discussions in the Manual that may not apply to all countries and to all Indigenous Peoples. Again, this Manual can be used as a reference, but the role of the facilitator or advocate is to ensure specific in-country discussions.

There are topics in this Manual that provide practical guides on monitoring and documentation of criminalization and impunity against Indigenous Peoples. These are based on existing templates and information that are usually required by grievance mechanism institutions usually for verification and validation purposes. These practical guides should not limit how other Indigenous Peoples' organizations organize themselves to document or air their grievances according to their customary practices. Facilitators are also encouraged to translate this Manual into their own languages or produce this into popular forms that would be more appropriate to the learners/communities. The facilitator may also opt to prepare additional references and/or materials (i.e., power point presentations, additional reading materials, photos and other documentations, among others) that would complement the sessions, as needed.

There are specific sections in the Manual that require advocates, trainers and facilitators to prepare and read documents prior to face-to-face discussions or before putting them into practice. The Manual provides summary discussions and additional references and links for such additional readings. There is no one-size-fits-all instruction on how to use the Manual and the time required as this depends on the specific needs of the learners and advocates. Tips, useful reminders and checklists are in boxes (please refer to the clip arts next page for your references).

**Contact Details****Useful Links****Case Study****Key Information**

Each part and chapter in the Manual is a stand-alone. Each topic can be used in separate activities, training or discussion sessions in any order. Likewise, the topics may be shortened and streamlined according to the learners' particular needs. However, it is ideal that in discussing criminalization and impunity, the facilitators follow the sequencing of the topics (i.e., general overview, then documentation and reporting, then advocacy) for a more cohesive and informed analysis.

This Manual does not just discuss concepts but provides practical steps on documentation and advocacy. It is then highly encouraged for communities that undergo training, or for advocates, to use the Manual as a reference, and come out with actual outputs and practical actions at the end of the sessions or topics, either for knowledge management purposes (and for evaluation of learning) or for actual submission to relevant bodies or governments.





# I.

## Who are Indigenous Peoples

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## WHO ARE INDIGENOUS PEOPLES?

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There is no generally agreed definition of Indigenous Peoples in a global context. Previous attempts to come up with a single definition were futile because there was no single definition that was accepted as precise and all-inclusive. In the end, it was a general consensus to agree on several criteria to identify Indigenous Peoples. These criteria were based on the definition in the Jose Martinez Cobo Study:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.<sup>3</sup>

This definition served as the working definition of the term “Indigenous Peoples” in the UN System, and which guided the work of the Working Group on Indigenous Populations (WGIP) in the drafting of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). From the Jose Martinez Cobo study, the following criteria have been used to identify and refer to Indigenous Peoples:

- Peoples who have developed a historical continuity in their territories dating back from pre-invasion and pre-colonial societies and have a strong link with their territories and natural environment
- Peoples who consider themselves distinct from other sectors of society
- Peoples who presently form a non-dominant section of society
- Peoples who are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.<sup>4</sup>



Photo credit: Tebtebba

International Labour Organization (ILO) Convention 169, on the other hand, provides two criteria that are jointly applied to identify who Indigenous Peoples and tribal peoples are:<sup>5</sup>

	Subjective Criteria	Objective Criteria
Indigenous Peoples	Self-identification as belonging to an Indigenous People	<p>Descent from populations, who inhabited the country or geographical region at the time of conquest, colonization or establishment of present state boundaries.</p> <p>They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status.</p>
Tribal Peoples	Self-identification as belonging to a tribal people.	<p>Their social, cultural and economic conditions distinguish them from other sections of the national community.</p> <p>Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.</p>

The UNDRIP, considered to be the current and most comprehensive international legal instrument addressing Indigenous Peoples rights, has no definition of the term “Indigenous Peoples.” The criteria mentioned above remain to be the general principles applied to discussions on the meaning of “Indigenous Peoples.”

## GENERAL SITUATION, ISSUES AND CONCERNS

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The World Bank reported that there are around 476 million Indigenous Peoples worldwide who are spread in over 90 countries.<sup>6</sup> The International Fund for Agriculture and Development (IFAD) reported that Indigenous Peoples number between 300-500 million.<sup>7</sup> The United Nations Permanent Forum on Indigenous Issues’ (UNPFII) information, as also stated in many other literatures, shows a global population of 370 million across 70 countries.<sup>8</sup> The same data has been used for over a decade now, revealing that there has been no updated statistic or accurate data on Indigenous Peoples’ total population worldwide because of the consistent failure of States to gather disaggregated information on their number and socio-economic situations. Additionally, the lack of a single accurate count may also be attributed to the refusal of some States to recognize Indigenous populations, the situation of some Indigenous groups who live remotely from the general population, and others who opt to be uncontacted or isolated.

Even if Indigenous Peoples represent only around 6% of the world’s 7.6 billion people,<sup>9</sup> they own, occupy, or use 20% of the earth’s surface,<sup>10</sup> and a quarter of the earth’s land surface area, and 80% of the world’s remaining cultural and biological diversity are within their territories.<sup>11</sup> They have an intricate relationship with nature as the source of their sustenance and traditional medicines, the platform for their cultural development and identities, and the temple of their spirituality. They are holders of traditional knowledge on natural resource management and environmental protection that are now recognized in international mechanisms as effective measures to climate change adaptation, mitigation and reduction.

Despite the vital role that Indigenous Peoples continue to play in maintaining the earth’s ecological balance and safeguarding its biodiversity, their histories have been marked by a legacy of structural inequality and exclusion resulting in discrimination, marginalization, ethnocide, poverty and violation of their human rights. Indigenous Peoples have been, and continue to be dispossessed of their lands, territories and resources that resulted and continue to result in massive displacements of their communities that also cause the loss of culture, identity or existence. They may be only 6% of the world population, but they represent eighteen percent (18%) of those living in extreme poverty.<sup>12</sup>

While huge strides were achieved in the recognition of Indigenous Peoples’ rights in international law in the last two decades, there remain powerful obstacles that hinder the full realization of their rights.



# II.

## Criminalization of Indigenous Peoples

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Among the most serious emerging concerns for Indigenous Peoples in recent years are criminalization, violence and impunity as these are interrelated with all the other concerns they face.

Criminalization or the use of laws to penalize those defending or exercising their rights has become an increasingly common tool and contributes to how these disputes often transform into open conflicts.<sup>13</sup> The distinctive characteristics of attacks against and criminalization of Indigenous Peoples defending their rights under the UNDRIP and under human rights treaties, with emphasis on violations occurring in the context of development projects, includes smear campaigns, trumped up criminal charges, arrests warrants arbitrarily issued, illegal shortcuts and mass criminalization.<sup>14</sup>

According to the report of former UNSRRIP Victoria Tauli-Corpuz to the Human Rights Council in 2018, there are numerous ways that Indigenous Peoples experience criminalization around the world which are often driven by rapid expansion of development projects on indigenous lands without their consent. Criminalization is an attempt, typically by the State, to silence and suppress Indigenous Peoples who voice their opposition to projects that threaten their livelihoods and cultures.<sup>15</sup>

The Inter-American Commission on Human Rights<sup>16</sup> noted that criminalization involves the misuse of criminal law and the manipulation of the State's punitive power by both State and non-state actors in order to hinder the work of human rights defenders and prevent legitimate exercise of their right to defender human rights.<sup>17</sup> "The manipulation of the criminal justice system is intended to delegitimize and halt the cours of action of the individual that has been accused, and thus paralyze or weaken his or her causes.<sup>18</sup> IACHR identified some forms of criminalization like filing of baseless criminal offenses, issuance of stigmatizing statements by public officials against human rights defenders, use of preventive measures like detention, with no procedural purposes but to prevent the defenders during crucial moments, in advancing their causes.

The global trend of criminalization has increased dramatically in recent years. In 2018, human rights watchdog Global Witness reported that almost 1,000 environmental defenders have been killed since 2010 and that in 2017, at least 201 land and environmental activists—almost half of them Indigenous—were targeted and murdered for defending their forests, rivers, wildlife, and homes against destructive industries.<sup>19</sup> This data is more conservative than the report of the International

Work Group for Indigenous Affairs (IWGIA)<sup>20</sup> that half of 400 environmental and human rights defenders were killed in 2017 defending their land and rights. These killings are often caused by extractive industries, agribusiness, infrastructure, hydroelectric dams, logging,<sup>21</sup> and other mega-projects, that are often than not, backed up if not perpetrated by the States.

### Criminalization can come in different forms but it usually follows a similar pattern

- **Smear campaigns:** Fueled by hate speech based on racism and discrimination, smear tactics and defamation campaigns on social media portray Indigenous Peoples as members of criminal gangs, guerrillas, terrorists, and threats against national security.
- **Criminal charges:** Indigenous leaders and their communities are often accused of vague charges—such as “perturbation of public order,” “usurpation,” “trespassing,” “conspiracy,” “coercion,” and “instigation of crime.” “States of emergency” are used to suspend judicial guarantees and suppress peaceful protests.
- **Arrest Warrants:** Warrants are repeatedly issued despite poor evidence and uncorroborated testimony. At times, accusations fail to name people, leaving an entire community accused of a criminal act. Many times, warrants are left pending, unexecuted, leaving the Indigenous person affected under a perpetual threat of arrest.
- **Illegal shortcuts:** The prosecution of Indigenous individuals often includes pre-trial detention that can last up to several years, as procedural guarantees are frequently flaunted. Indigenous Peoples seldom have the means to seek legal counsel or even an interpreter. If acquitted, indigenous individuals are rarely awarded remedies.
- **Mass criminalization:** Indigenous organizations have been subject to illegal surveillance and confiscations while laws imposing registration requirements and funding controls weaken their mobilization and restrict their support. Civil society organizations and lawyers who assist indigenous communities have been physically attacked and even killed.

Source: Jaya Ramachandran, *Indigenous Peoples in the Grip of ‘Criminalization’, Warns New UN Report*, <https://www.indepthnews.net/index.php/global-governance/un-insider/2094-indigenous-peoples-in-the-grip-of-criminalization-warns-new-un-report>, accessed September 30, 2020

Indigenous Peoples’ experience in their own countries include trumped-up charges, imprisonment, harassment, arbitrary detention, torture, lack of Free Prior and Informed Consent (FPIC) and even murder.<sup>22</sup> They also face vilification and stigmatization, as they are publicly portrayed or accused of being terrorists, or criminals. About 80 per cent of the killings took place in Brazil, the Philippines, Colombia, Mexico and the other 200 killings of people defending their land, forests and rivers against destructive industries occurred across 24 countries in 2016.<sup>23</sup>

Criminalization impacts on a wide range of human rights and affects Indigenous Peoples individually and collectively.

At the individual level, smear campaigns seek to discredit indigenous leaders as reputable representatives of the community, cause personal humiliation, and put them at significant risk of becoming targets of violent attacks. These also create stigma within the community and impact on the mental and physical well-being of the individual. Ultimately, criminalizing Indigenous Peoples alienates them from their families and communities when they are forced to go into hiding and their freedom of movement is restricted.

The impacts of criminalization of Indigenous leaders go beyond the individual and family levels and affect the entire community. Prolonged alienation of Indigenous leaders from their families and communities constrains the latter to discontinue their advocacy of concerns and this disrupts social cohesion. All in all, criminalization and impunity result in further increase of marginalization and social inequalities of Indigenous Peoples.

While the State's responsibility to a person's rights to life, liberty and security is enshrined in many international declarations including in Article 3 of the Universal Declaration of Human Rights, in Articles 6 (1) and 9 (1) of the International Covenant on Civil and Political Rights, and in Article 7 of the UNDRIP, the situation of human rights defenders is grim. Recent studies by the Special Rapporteur on the situation of human rights defenders (A/71/281) and the alerts over "a global crisis" of attacks against environmental human rights defenders, highlight the fact that many of these defenders are members of indigenous communities.

This is aggravated by the already dismal state of Indigenous Peoples' rights in many other areas which will be discussed separately below.

## **Land, Territories and Resources**

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Many governments do not recognize Indigenous Peoples' ownership of their lands, territories and resources. Even where they have obtained legal protection titles to these, there remains a huge gap in the actual implementation of such laws.<sup>24</sup> For instance, according to IWGIA (n.d.), despite almost all countries in Latin America ratifying the ILO Convention 169, the process of obtaining FPIC for many development projects is still largely questionable in the region.

In Mexico for example, the Yaqui people have suffered various attacks, threats and criminalization for opposing the construction of an aqueduct and gas pipeline, and for demanding their right to FPIC that resulted in the detention of one of their community leaders. This situation has continued despite calls from the country's Commission for Human Rights to ensure his protection and the request for precautionary measures in favor of the Yaqui community by the Inter-American Commission on Human Rights (IACHR).<sup>25</sup>

In many other cases, there are also contradictions of policies at the national level that result in the de facto denial for Indigenous Peoples to access and manage their own resources. Meanwhile, incessant land appropriation and land grabbing of Indigenous Peoples' lands and resources for

development projects (i.e. dams, highways, mining, logging, monocropping, biofuel plantations, etc.) which are often state-sponsored, cause large-scale forced evictions and other forms of gross human rights abuses particularly in Africa and Asia.<sup>26</sup> The absence of, or weak legal framework for the protection of Indigenous Peoples' lands and waters, compounded by the lack of documentation of existing customary rights to these resources, often becomes convenient justifications for natural resource exploitation since there is no 'visible' use or occupation of the land.<sup>27</sup>

Insufficient and weak legal recognition of Indigenous Peoples' tenure to their lands, territories and resources is the driver of conflict, environmental degradation, and weak economic and social development, thereby threatening their cultural survival and vital knowledge systems.<sup>28</sup> As a consequence, Indigenous Peoples' knowledge systems which are proven to be vital in maintaining the last key cultural and biodiversity hotspots in the world are likewise being threatened. The UNSRRIP in her report<sup>29</sup> notes that the failure to ensure land rights constitutes the core underlying cause of violations of Indigenous Peoples' rights.

The different forms of violence and attacks that Indigenous Peoples around the world experience are often accompanied by pervasive impunity. Brazil, for example, has been named the most dangerous country in the world for environmental defenders<sup>30</sup> where incidents of arbitrary arrests, tortures and criminalization of their leaders are reported by Indigenous Peoples.

Indeed, Indigenous Peoples need to secure their rights to access, use and manage their natural resources and for legal recognition of their land tenure rights as an essential foundation for them to maintain their livelihoods; to exercise their civil, social, cultural, political, and economic rights; and to contribute to local, national, and global sustainable development (UN, 2009a).<sup>31</sup> In fact, legal recognition and demarcation of these lands, territories and resources, are the key means to empower Indigenous Peoples.<sup>32</sup>

## **Right to Self-Determination**

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The UNDRIP accords significant provisions to elaborate on Indigenous Peoples' rights to self-determination or the "fundamental right of every people to freely determine its own political status and freely pursue its economic, social and cultural development."

Indigenous Peoples do not have a common description of the status of their rights to self-determination or how it is being recognized in their own countries. There are Indigenous Peoples who are able to negotiate and sign legal agreements or treaties with their own governments (e.g., between Indigenous Peoples and the Crown in Canada<sup>33</sup>), while there are others who have existing political spaces (e.g., the Sami parliament<sup>34</sup>) to discuss particular Indigenous Peoples' issues.

The right to self-determination includes the right of Indigenous Peoples to their cultures including the tangible and intangible manifestations of their ways of life, achievements and creativity, and their physical relationships with their lands, territories and resources.<sup>35</sup> The Expert Mechanism recently conducted a study on FPIC, which was submitted to the Human Rights Council in September 2018. In that study, the Expert Mechanism argued that the right to self-determination is

the fundamental human right on which FPIC is based, with strong links to the right to autonomy and self-government, as well as the right to be free from discrimination.

Meanwhile, the Human Rights Committee held that the right to self-determination is inherently connected to the right to culture including influence in decision-making in matters that affect their natural environment, their means of subsistence and their culture.<sup>36</sup> There are cases where Indigenous Peoples are not only recognized constitutionally, but are provided established rights over their own territories that grant use rights in perpetuity or provide land titles such as in Nicaragua's North and South Atlantic Regions.<sup>37</sup> Unfortunately, this is not true for all Indigenous Peoples in many other countries where the prevalent lack of access to their ancestral territory impedes their exercise of their right to self-determination.<sup>38</sup>

Many Indigenous Peoples are not legally recognized by their own governments and their own constitutions. In countries where they are legally recognized, the implementation of laws and policies regarding Indigenous Peoples remains a challenge. For instance, legal recognition in their countries is often interpreted very differently by the Indigenous Peoples themselves and the representatives of the states<sup>39</sup> or outright discredited on a legal scale.<sup>40</sup>

In other cases, Indigenous Peoples are recipients of imposed development agenda, often by the states. This relegates them to being passive beneficiaries and not active actors, which interferes with their capacity to exercise control over decisions which impact on their daily lives. In many cases, the lack of their meaningful involvement in decision-making processes has resulted in detrimental impacts, marginalization and a legacy of economic, social, cultural and physical challenges<sup>41</sup> that ultimately result in criminalization and impunity.

For example, the Honduras State agents and senior executives of a hydroelectric company colluded in the planning, execution and cover-up of the assassination of Berta Caceres, an indigenous leader in the opposition to a mega dam in the area.<sup>42</sup>

In fact, the escalation of attacks against Indigenous Peoples occurs due to the skewed power structure where private companies wield so much power over states and government policies and regulations are tailored to the profitability of their businesses.<sup>43</sup>

## **Economic, Social and Cultural Rights**

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In recent years, increased international attention has been given to economic, social and cultural (ESC) rights and to a certain degree, domestically, but not enough has been done to fully and systematically address the economic, social and cultural rights of minorities and Indigenous Peoples.<sup>44</sup>

The requisites for Indigenous Peoples' economic, social and cultural rights include basic governmental services including but not limited to adequate food and housing, fair and accessible health services/healthy environment, free and compulsory education and decent and productive work, among others. Social and cultural rights are also interconnected with and are relevant to the implementation of a range of other rights<sup>45</sup> including for example, the right to seek legal counsel when needed.

Criminalization and impunity against Indigenous Peoples are made worse by their inability to report these due to a myriad of social, cultural and economic factors that leave them vulnerable. Many indigenous communities are in remote places where there is lack of access to means of communication; lack of knowledge on how and where to report cases; difficulties due to language barriers; and lack of resources to do so. Hence, it must be presumed that in large parts of the world, a significant number of attacks against Indigenous defenders go unreported and never figure in the mainstream media.<sup>46</sup> The process of defending Indigenous leaders against such criminalization could also be resource intensive as they are forced to invest time and financial resources in their defense and travel expenses, and attendance at court hearings puts them at risk of losing their livelihood that ultimately results in economic losses.<sup>47</sup>

## Conflict

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Despite the many achievements at the global level, Indigenous Peoples continue to be confronted with powerful obstacles that hamper the full realization of their rights. While worldwide they are heterogeneous, there is a global trend of them facing multidimensional aspects of poverty, legacy of inequality and exclusion, and militarization.

For example, an escalation of violence in the Embobut forest in Kenya led to burning of houses, eviction, arrests and killing of Sengwer people over a European Commission-funded conservation and climate change project. In Southern Philippines, Indigenous Lumads experience attacks, forced displacements, arbitrary arrests and extrajudicial executions for being stigmatized and suspected of being members of the New People's Army (NPA). The same is true in many other countries such as in Colombia, Brazil, Honduras, India, other regions of the world, and even in peaceful protests against large development projects.<sup>48</sup>

Many Indigenous Peoples have been uprooted from their land due to discriminatory policies or armed conflict. Indigenous land rights activists face violence and even murder when they seek to defend their lands. Human rights abuses related to their land rights and culture, have prompted growing numbers of Indigenous Peoples to leave their traditional lands for towns and cities. Cut off from resources and traditions vital to their welfare and survival, many Indigenous Peoples face even greater marginalization, poverty, disease and violence – and sometimes, extinction as a people.<sup>49</sup>

Targeting Indigenous persons affects both individual members as well as entire Indigenous communities. The killings of Indigenous leaders and community members cause irreparable harm and damage to their social fabric. Such attacks are undertaken with the express intent to silence their voices, disrupt their organization, and impede their ability to express their concerns over matters affecting their communities.<sup>50</sup>

## MEASURES TO PREVENT AND PROTECT INDIGENOUS PEOPLES FROM CRIMINALIZATION

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In her report,<sup>51</sup> former UNSRRIP Victoria Tauli-Corpuz asserts that the justice system did not only fail to address Indigenous Peoples' concerns. Instead, it has even become a tool for the state and private interests to attack authorities and leaders of Indigenous communities. However, she outlines measures that can be undertaken by different actors to protect Indigenous Peoples.

Adopting enabling mechanisms for a safe environment for Indigenous Peoples to advocate for their rights is of prime importance. States should also publicly recognize their rights, particularly their right to self-determination to define the development they want for their lands, territories and resources. There are also different measures that can be done at the regional and international levels.

For instance, at the regional level, precautionary and provisional measures such as those requests done by the Inter-American and Commission on Human Rights, Inter-American Court of Human Rights, and the landmark judgment by the African Court on Human and People's rights in favor of the Ogiek peoples in Kenya, underline the state's obligation to ensure safety of, and protect Indigenous Peoples' rights.<sup>52</sup>

Meanwhile, the UN Environment Programme (UNEP) has adopted a policy on "promoting greater protection for environmental defenders" that provides safeguards and mechanisms for rapid response mechanisms to protect environmental rights and aims for businesses to better understand these. The "Framework of Analysis for the Prevention of Atrocity Crimes" was developed by the UN Special Advisers on the Prevention of Genocide and on the Responsibility to Protect as a guide for assessing the risk of genocide, crimes against humanity and war crimes from an early warning perspective.<sup>53</sup>

Most importantly, Indigenous Peoples also provide various examples of how they have developed their protection measures against criminalization. Some have created their local and regional networks of support and monitoring and reporting systems. Some others have mapped, delineated and subsequently claimed customary rights over their territories to counter states' claims over them. Others altogether managed to stop forced evictions and reduced threats against them and halted permits for large scale projects by means of injunctions where courts decide in their favor.<sup>54</sup> Ultimately, to stop criminalization, Indigenous Peoples need to build and strengthen their capacities and ranks and learn from the experiences of other Indigenous communities around the world, while continuing to push the states and other actors to recognize, protect and fulfill their rights as enshrined in the UNDRIP.

## INDIGENOUS WOMEN AND CHILDREN

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While the situations of Indigenous women vary in every country, their concerns are often too similar because of their indigenous status. Their experiences and the challenges they face throughout the world are often similar in terms of poverty, human rights violations, lack of access to education, health care and socio-economic development.<sup>55</sup>

Indigenous women and girls experience complex, multidimensional and mutually reinforcing human rights violations. The abuses of their collective, economic, social, cultural, civil, and political rights are varied and severe. They also suffer from other forms of violence, including from traditional practices, sexual violence, trafficking, domestic violence and gender-based killings.<sup>56</sup> They are particularly vulnerable to such violence both within their own communities and in the broader society. They experience many kinds of violence in times of peace and war, including female genital mutilation, forced or early marriages, polygamy, beating, and forced labour.<sup>57</sup>

As Indigenous Peoples are increasingly losing control over their ancestral lands and resources brought by a host of factors, there is also a trend of increasing migration of indigenous women who are forced to take income-generating work either at home, in urban areas,<sup>58</sup> or foreign lands, rendering them more vulnerable to work-related abuses and sexual harassments. Their other issues include poor health stemming from lack or dearth of basic services including clean water, sanitation and access to health care services; illiteracy, lower wages, low participation in decision-making bodies, politics and employment.<sup>59</sup>

Despite the severity and regularity of violations of Indigenous women's rights, there is a seeming lack of attention of the UN human rights and development policy in analysis including limited inclusion of collective rights, little exploration of intersectionality in relation to the vulnerability of indigenous women, and a lack of exploration of the gender implications to rights issues affecting indigenous communities.<sup>60</sup>

Oftentimes too, indigenous women are lumped with other Indigenous Peoples, thus their particular needs and concerns are lost in the process. For instance, in 2004, the UNPFII recommended to the UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) the need to pay special attention to the issues related to maintaining the integrity of Indigenous women and the gender dimension of racial discrimination against them.<sup>61</sup>

A vast majority of Indigenous women live in countries that have ratified ILO Convention No. 111 and CEDAW, and in several cases ILO Convention No. 169 or No. 107. Some of these countries have incorporated these international legal provisions into their national legislation. Nonetheless, implementation remains a challenge.<sup>62</sup>

## RIGHTS OF INDIGENOUS PEOPLES UNDER INTERNATIONAL LAW

*The human family is a tapestry of enormous beauty and diversity. The indigenous peoples of the world are a rich and integral part of that tapestry. They have much to be proud of and much to teach the other members of the human family. The protection and promotion of their rights and cultures is of fundamental importance to all States and all peoples.*

- Kofi Annan



Key information to know under this topic:

- What international instruments enumerate Indigenous Peoples' rights?
- What are the individual rights of Indigenous Peoples?
- What are the collective rights of Indigenous Peoples?

Human rights are inherent and universal and belong to all human beings, regardless of race, nationality, ethnicity, gender, language, religion, or belief. It is the duty of States to protect, fulfill and promote all human rights. The civil, political, economic, social and cultural rights pertaining to all human beings as enshrined in the Universal Declaration of Human Rights (UDHR) and in the nine (9) core international human rights treaties equally apply to Indigenous Peoples and other human beings. Indigenous Peoples' rights are not new or special rights, but are articulations of universal human rights as these apply to them. Indigenous Peoples enjoy certain rights that are linked to their collective identity like the right to their cultures, languages, lands, territories and resources, self-determination and traditional political, legal, economic, social and cultural institutions.

## Core International Human Rights Treaties

- International Covenant on the Elimination of all Forms of Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of all forms of Discrimination Against Women
- Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Rights of Persons with Disabilities

Civil and political rights are “the rights that generally restrict the powers of the government in respect of actions affecting the individual and his or her autonomy (civil rights), and confer an opportunity upon people to contribute to the determination of laws and participate in government (political rights).”<sup>63</sup> These are guarantees against possible abuses of an otherwise powerful entity—the State. It pertains to the relationship of the individual as a member of a political entity or the State, thus these are usually referred to as **individual rights**. These rights are primarily laid down in the International Covenant on Civil and Political Rights (ICCPR). As human beings, Indigenous Peoples are equally entitled to the universally proclaimed civil and political rights that include:

CIVIL AND POLITICAL RIGHTS	
Right to life	Right to privacy
Right to freedom from torture	Right to freedom of thought, conscience and religion
Right to freedom from slavery, servitude, forced labour	Right to freedom of expression
Right to liberty and security of persons	Right to freedom of peaceful assembly
Right to liberty of movement	Right to freedom of association
Right to fair trial and to due process	Right to a nationality

On the other hand, economic, social, and cultural rights include the right to work; the right to an adequate standard of living including food, clothing, and housing; the right to physical and mental health; the right to social security; the right to a healthy environment; and the right to education. The International Covenant on Economic, Social and Cultural Rights (ICESCR) stresses in its preamble that human dignity, justice, peace and freedom may only be achieved when conditions are created where everyone fully enjoys the economic, social and cultural rights. These economic, social and cultural rights include:

ECONOMIC, SOCIAL AND CULTURAL RIGHTS	
Right to work	Right to health
Right to just and favorable conditions of work	Right to education
Right to freedom from slavery, servitude, forced labor	Right to culture
Right to form and be part of trade unions	Right to benefit from scientific progress and applications
Right to social security	
Right to adequate standard of living	

It is the duty of States to guarantee the exercise of these rights (civil, political, economic, social, cultural rights) without discrimination and undertake all measures, including the development of laws, to fully realize these rights.<sup>64</sup>

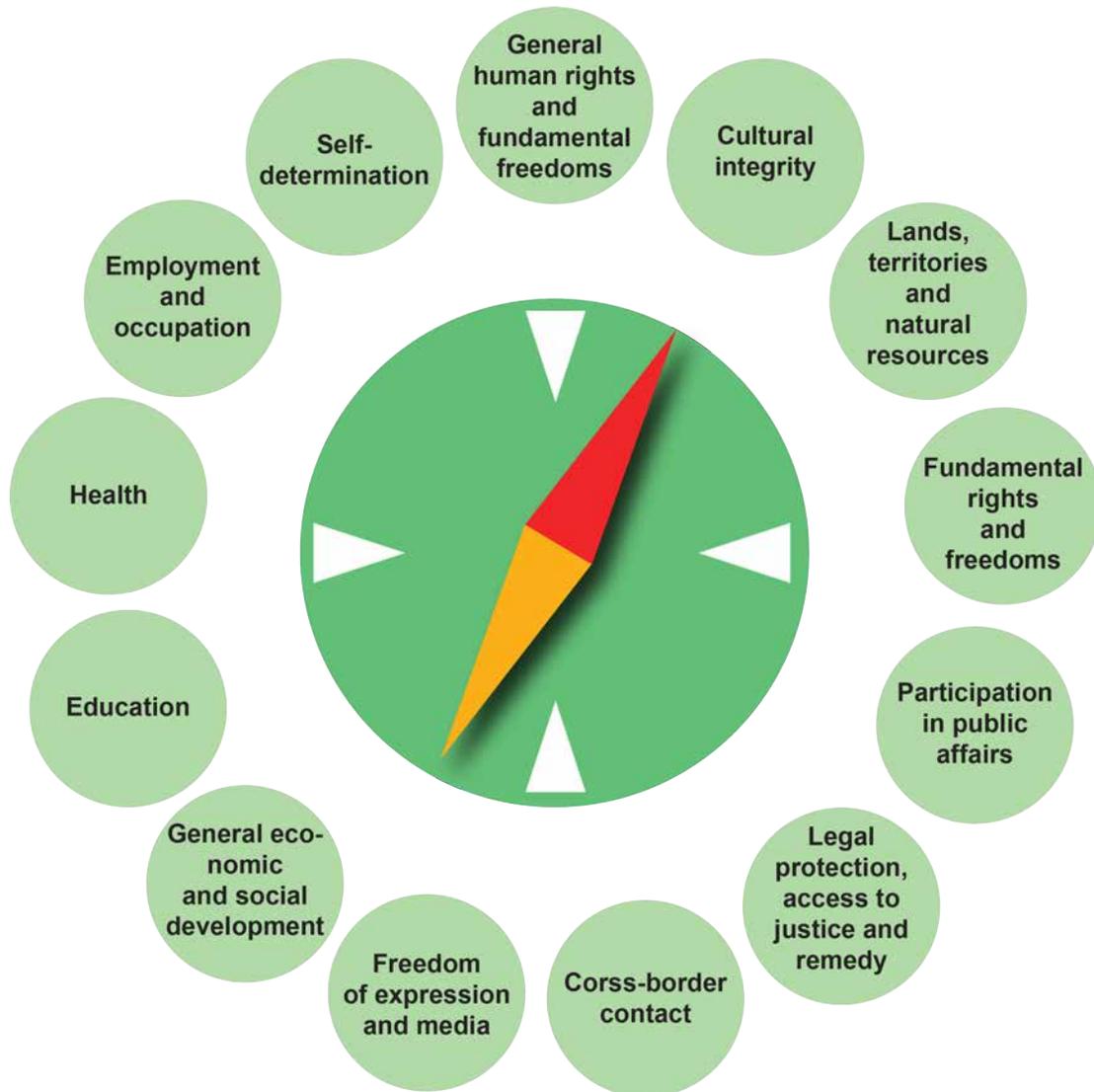
More specifically, the UNDRIP lays down a comprehensive enumeration of Indigenous Peoples' rights. It has been repeatedly emphasized that the UNDRIP does not create new or special rights or privileges for Indigenous Peoples, but merely articulates and elaborates the necessary minimum standards for the full realization of their rights. According to the UNSRRIP, the UNDRIP "does not fundamentally create for Indigenous Peoples new substantive rights that others do not enjoy, (A/64/338, para. 47); rather, it recognizes for them the human rights that they should have enjoyed all along as part of the human family, contextualizes those rights in the light of their particular circumstances and characteristics, in particular their communal bonds, and promotes measures to remedy the rights' historical and systemic violation."<sup>65</sup>

Although the UNDRIP is a "declaration" and technically not binding as a treaty, it nonetheless refers to already existing human rights obligations contained in treaties. To some extent, it embodies general principles of international law and reflects accepted norms of customary international law.<sup>66</sup>

The UNDRIP emphasizes that all Indigenous Peoples, whether as individuals or as a collective, have the right to full enjoyment of all the human rights recognized under all international human rights instruments.<sup>67</sup> What make Indigenous Peoples' rights distinct are their **collective rights** that are attributable to the communal nature of their cultures. These are expressions of the collective dimension of their corresponding individual rights (e.g., the right to collective property) or they may be inherently collective—new and different as compared to the rights of the individual (e.g.,

the right of peoples to self-determination).<sup>68</sup> Indigenous Peoples' collective rights include their right to self-determination, right to their land and resources, right to culture and right to development.

The Indigenous Navigator enumerated the summarized rights under the UNDRIP in this infographic:<sup>69</sup>



**Figure 1.** Rights of Indigenous Peoples, from the website of the Indigenous Navigator

Without implying that there are rights more vital than others, it is important that in the context of Indigenous Peoples' rights, the following rights are more deeply comprehended, as these are often misunderstood or misinterpreted, and more violated:

## Right to Self-determination

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The right to self-determination refers to the freedom to determine political status and freedom to pursue economic, social and cultural development.<sup>70</sup> It includes the right to autonomy or self-government<sup>71</sup> and the right to maintain their political, legal, economic, social and cultural institutions, and the right to participate in the political, economic, social and cultural life of the State.<sup>72</sup> Self-determination also includes the right to traditional justice systems and customary means of settling disputes. Integral to the exercise of Indigenous Peoples' self-determination is the right to FPIC on all matters affecting them.

## Right to Land, Territories and Resources

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Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources by virtue of traditional ownership and occupation,<sup>73</sup> including the right to restitution and compensation in cases when these lands or resources have been improperly taken or damaged,<sup>74</sup> and the right to conservation and protection of the environment and the productive capacity of these territories and resources.<sup>75</sup>

## Right to Cultural Integrity

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Indigenous Peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations;<sup>76</sup> to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures. These include human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.<sup>77</sup> Likewise, Indigenous Peoples have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions;<sup>78</sup> to practice and revitalize their cultural traditions and customs;<sup>79</sup> and to be protected from any form of forced cultural assimilation or destruction.<sup>80</sup>

## Right to Development

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The UNDRIP acknowledges that by recognizing Indigenous Peoples' right to control developments affecting them, their lands, territories and resources, their institution, cultures and traditions can be maintained and strengthened.<sup>81</sup> Thus, it underscores the right of Indigenous Peoples to be secure in their development,<sup>82</sup> and to determine and develop their own priorities and strategies for development. This includes their right to be actively involved in development plans affecting them including *inter alia* health, housing and other socio-economic programs.<sup>83</sup>

## Right to Education

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Indigenous Peoples have the right to equal access to all levels and forms of quality and affordable education without discrimination. To fully achieve this, they have the right to *inter alia*, establish and control their own education systems and institutions, the use of indigenous language as medium of instruction, and culturally appropriate methods of teaching and learning.<sup>84</sup> The dignity and diversity of Indigenous Peoples' cultures, traditions, histories and aspirations must be appropriately reflected in education and public information.<sup>85</sup>

## Right to Health

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Likewise, Indigenous Peoples' right to equitable access to health covers *inter alia*, the right to their traditional medicines and to intellectual property over these, to maintain their traditional health practices, and to the conservation of vital medicinal plants, animals and minerals used in their traditional health practices.<sup>86</sup>

## OTHER RELEVANT INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RELATING TO INDIGENOUS PEOPLES' RIGHTS

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The UNDRIP, as the primary international document on Indigenous Peoples' rights was already discussed above, and reference has been made to the UDHR, the ICCPR and the ICESCR as important international human rights instruments. In addition to these, the following international and regional instruments are likewise essential and should be referenced in elaborating Indigenous Peoples' rights:

1. **ILO Convention 169**, known as the Indigenous and Tribal Peoples Convention, was adopted by ILO General Conference in 1989 and enforced in 1991. Prior to the UNDRIP, ILO 169 was deemed the most comprehensive instrument in international law for the protection of Indigenous Peoples' right to their own culture, laws and customs.<sup>87</sup> It deals with the right to possess land and territories traditionally occupied by Indigenous Peoples, right to social and religious values, and the right to health services, education, languages and cross-border cooperation. The cornerstone of this Convention is the fundamental principles of consultation and participation on matters that affect them. Additionally, it aims to overcome discrimination of Indigenous Peoples especially in terms of employment. As of writing, ILO 169 was ratified by twenty three (23) countries. Fifteen (15) of these ratifications are countries from Latin America<sup>88</sup> and only one country each from Asia (Nepal), Africa (Central African Republic) and the Pacific (Fiji). The five other countries are from Europe.

2. **Convention on the Rights of the Child** champions the human rights of children, including Indigenous children, towards the development of their full potentials as human beings. The Committee on the Rights of the Child, aside from several recommendations in relation to Indigenous children, has adopted General Comment No. 11 (2009) that expounds on their rights and their rights under the Convention.

3. **Convention on the Elimination of Discrimination Against Women** (CEDAW) espouses equality and non-discrimination of women and the State obligation to ensure these principles. Many recommendations of the CEDAW directly relate to Indigenous women.

4. **Convention on the Elimination of Racial Discrimination** (CERD) is an important treaty that has been addressing discrimination and inequality and has been consistently issuing recommendations in relation to Indigenous Peoples. CERD's recommendations in 1997 were:

- a. Recognize and respect indigenous distinct culture, history, language, and way of life as an enrichment of the State's cultural identity and to promote its preservation;
- b. Ensure that members of Indigenous Peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;
- c. Provide Indigenous Peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
- d. Ensure that members of Indigenous Peoples have equal rights in respect to effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;
- e. Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their languages.<sup>89</sup>

5. **Convention on Biological Diversity** (CBD) under Article 8(j) calls on State parties to enact national legislations to respect and preserve the knowledge, innovations and practices of Indigenous Peoples and local communities embodying the traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

6. The **United Nations Framework Convention on Climate Change** (UNFCCC) does not specifically mention Indigenous Peoples in its provision. However, the **Paris Agreement** under the UNFCCC that deals with greenhouse-gas-emissions, mitigation, adaptation, and finance recognizes the rights of Indigenous Peoples and their role in climate change mitigation and adaptation through their traditional knowledge and systems.

7. The **American Declaration on the Rights of Indigenous Peoples** covers individual and collective rights of Indigenous Peoples in the Americas i.e., civil, political, economic, social and cultural rights. The Declaration includes, *inter alia* gender equality; right to belong to Indigenous Peoples; recognition of the juridical personality of Indigenous Peoples and their organizations; right against assimilation; protection against genocide; guarantees against racism, racial discrimination, xenophobia, and other related forms of intolerance; right to cultural identity; right to indigenous knowledge systems, language and communication; right to education; right to indigenous

spirituality; right to indigenous forms of family; right to health; right to a healthy environment; right to peace, security and protection; right to development; protection of cultural heritage and intellectual property; labor rights; protection of Indigenous Peoples in voluntary isolation; right to land, territories and resources.

8. The **African Charter on Human and Peoples' Rights (ACHPR)** is the first binding instrument in international human rights law that covers individual rights and equally provides for justiciable collective rights that includes, *inter alia*, the right to self-determination, the right to equality, right to peace and security, right to development, and right to a satisfactory environment. While the African Charter does not specifically define “peoples,” the quasi-judicial African Commission on Human and Peoples' Rights has interpreted the rights under the Charter as equally applicable in the context of Indigenous Peoples.

## CRIMINALIZATION AND THE STATE'S DUTY TO PROTECT INDIGENOUS PEOPLES' RIGHTS

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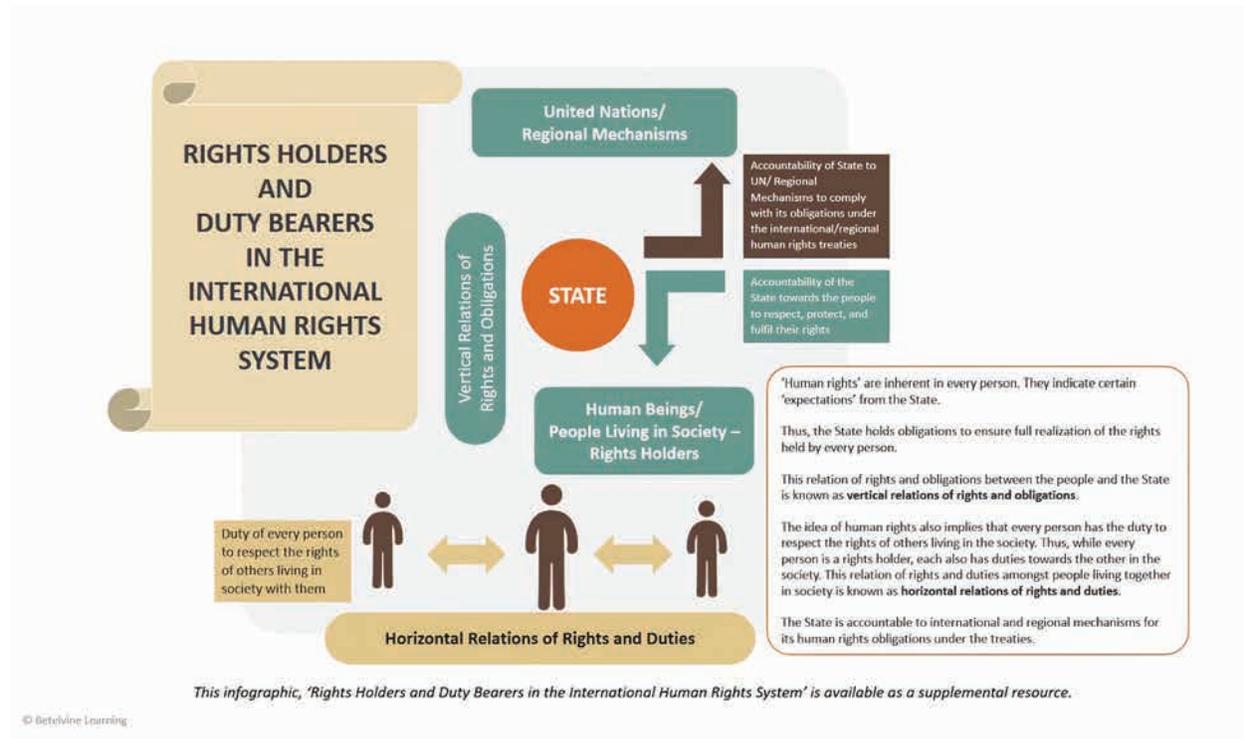
### Rights holders and duty bearers

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Human rights ensure that all human beings can live with freedom and dignity without discrimination as to gender, race, religion, ethnicity, political beliefs, and national or social origin or status. International human rights regime identifies the rights holders (all human beings), and the duty bearers (States). **Duty bearers** refer to all actors who have the duty to **protect, promote and fulfill** human rights. They traditionally indicated to States but the scope has been expanded to include even non-State actors like corporations and international financial institutions, but always with the complicity of States. **States remain to be the primary duty bearers** and cannot assign their duty to others. While corporations or other non-State actors are under obligation to respect human rights, it is the State that has the ultimate responsibility to ensure that this respect is realized. As duty bearers, States have the obligation or responsibility to protect, promote and realize human rights, to abstain from human rights violations and to ensure accountability in case of violations. Within this duty, the State needs to set in place and enforce an appropriate regulatory environment through laws, policies and regulations that ensure protection and respect of human rights by all stakeholders.

On the other hand, human beings, as **human rights holders**, can call on the State to protect their rights, and hold the State responsible and accountable for any violation of their rights. For Indigenous Peoples, rights holders include not just individuals, but indigenous communities as well, in respect to their collective rights.

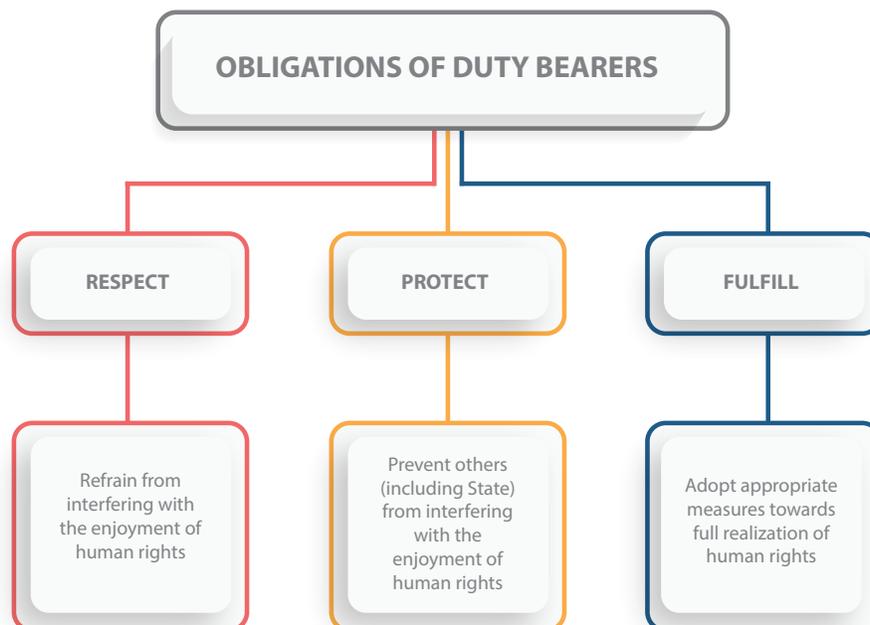
## Relationship of human rights holders and duty bearers:



**Figure 2.** Rights Holders and Duty Bearers in the International Human Rights System

Source: <https://i.ytimg.com/vi/Y6d36h1jYOM/maxresdefault.jpg>

## The State's Duty to Respect, Protect and Fulfill Human Rights



State duties to respect, protect and fulfill human rights can be realized in various forms, but are grounded on the full respect, protection and implementation of Indigenous Peoples' rights under the UNDRIP.

Duties of States	State duties in relation to Indigenous Peoples' rights <sup>90</sup>
1. Obligation to Respect Indigenous Peoples' rights	<ul style="list-style-type: none"> <li>• Effectively recognize Indigenous Peoples' right to participate in all matters concerning them.</li> <li>• Recognize and acknowledge indigenous land rights in national legislation and demarcate them.</li> <li>• Regularly examine human rights situations where indigenous land rights are at stake.</li> <li>• Effectively monitor laws that protect the human rights of Indigenous Peoples.</li> <li>• Implement an effective monitoring system to ensure human rights policies relating to indigenous land rights are being implemented.</li> <li>• Abstain from interfering with the indigenous land tenure system, but instead recognize it as equal to the state system based on the right to property.</li> <li>• Prevent and investigate violations, bring to justice and punish perpetrators, and provide reparations for harm and injuries caused.</li> </ul>
2. Obligation to Protect Indigenous Peoples' rights	<ul style="list-style-type: none"> <li>• adoption of protective measures to secure the observance of indigenous land rights, e.g., legal and policy reform, institutional actions, reparations</li> <li>• adoption of measures to ensure that development projects do not have adverse impacts on the survival and development of affected Indigenous Peoples</li> <li>• adoption of measures that will ensure that benefits from development projects in indigenous territories accrue to them</li> <li>• observance of due diligence to prevent the violation of indigenous land rights or to use the means at its disposal to respond to it, e.g., carrying out a serious investigation of violations committed, identify those responsible, and impose appropriate punishment, and ensure that the victim gets adequate compensation.</li> </ul>
3. Obligation to Fulfill Indigenous Peoples' rights	<ul style="list-style-type: none"> <li>• translating its international human rights obligations into domestic law, e.g. adopting national laws to respect, protect and fulfill Indigenous Peoples' rights</li> <li>• aligning all its domestic laws to be compatible with the provisions of these laws and in line with international human rights standards</li> <li>• submitting periodic reports to the human rights treaty bodies on the performance of their obligations, including their actions on recommendations made under the treaty bodies.</li> </ul>

State duty to protect and ensure the realization of Indigenous Peoples' rights continues to fail as evidenced by a global trend of various forms of reprisals against them, including judicial harassments, prosecution, unlawful arrests and detentions, abusive checks and surveillance, smear campaigns, threats and intimidation, killings, enforced disappearances and torture. These reprisals often happen when Indigenous Peoples assert their rights to their lands, territories and resources and in most cases, in the context of corporate interest. State and paramilitary forces and private armed groups are often the perpetrators who go unpunished and are even rewarded, underscoring an environment of impunity of these violations by States. Restrictive and anti-human rights legislations, harmful political rhetoric, and State-sponsored vilification are making it increasingly difficult and unsafe for Indigenous Peoples' rights defenders.

## Human Rights Violations and State Responsibility

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State obligations to respect, protect and fulfill human rights are hinged to international human rights law. Any violation by States of the provisions of international human rights treaties resulting in a failure in the said obligations is a human rights violation.

The duty to protect human rights rests primarily with governments (States) but human rights violations are committed either directly or indirectly by States. **Direct violations** are acts that are intentionally committed by States, while **indirect violations** result from the State's failure to prevent the violation. Direct violations are actions by State agents like the police, military, judges, prosecutors, government officials, and other persons acting at the behest of governments. These violations can be physical or violent such as killings and torture, but these can also be non-violent as when the Indigenous Peoples' collective rights to social services are denied. Indirect violations occur between individuals or groups within a society and the State fails to protect human rights and to prevent these violations from happening. An example is when corporations destroy sacred sites of Indigenous Peoples and the State has no measures in place to prevent the destruction or make businesses accountable, and no mechanisms for redress. As discussed in previous chapters, the violations of Indigenous Peoples' rights are often correlated to their rights to their lands, territories and resources, to their culture or ways of life, and to their identities.

## How Can the State Protect Indigenous Peoples' Rights Against Criminalization?

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The issue of criminalization of Indigenous Peoples' rights defenders can be addressed when States, as human rights duty bearers, ensure a political, legal and cultural environment where Indigenous Peoples' rights defenders are free to exercise their rights, safe from any form of reprisals. Legislations and policies that restrict fundamental freedoms or penalize actions of human rights defenders should be amended and instead, laws and policies that strengthen protection of human rights should be passed and enforced. Likewise, States should cease from politically portraying Indigenous Peoples'

rights defenders as “enemies of the State,” “terrorists,” and other criminal imputations. Finally, as duty bearers, States must put an end to criminalization of Indigenous Peoples’ rights defenders by condemning any form of attacks against them and ensuring accountability for any violation.

There is extensive international jurisprudence consisting of numerous recommendations, resolutions and decisions of regional and international human rights bodies that call for the repeal, revision, reformation, and passing of laws and policies to ensure protection of Indigenous Peoples’ rights and call for investigation of human rights violations. This jurisprudence provides strong backbones for advocacy at the national level for policy and legislative reform to stop criminalization of Indigenous Peoples, and for accountability of perpetrators. This jurisprudence provides a clear path to how criminalization should be addressed by States.



### **Nigeria, CERD/C/NGA/CO/18, 1 November 2005**

In the light of general recommendation XXIII (1997) on the rights of Indigenous Peoples, the Committee urges the State party to take urgent measures to combat “environmental racism” and degradation. In particular, it recommends that the State party repeal the Land Use Act of 1978 and the Petroleum Decree of 1969 and the adoption of a legislative framework which clearly sets forth the broad principles governing the exploitation of the land, including the obligation to abide by strict environmental standards as well as fair and equitable revenue distribution. The Committee reiterates that along with the right to exploit natural resources, there are specific, concomitant obligations towards the local population, including effective and meaningful consultation. It further urges the State party to conduct full and impartial investigations of cases of alleged human rights violations by law enforcement officials and by private security personnel, institute proceedings against perpetrators and provide adequate redress to victims and/or their families.

## STAGES OF DOCUMENTATION OF CRIMINALIZATION CASES



### 1. Fact Finding/Investigations

Common techniques of fact-finding:91

- Investigation for a limited period
- Investigation for a longer period
- Low profile fact-finding mission (FFM)
- High level delegation/FFM
- International delegation/FFM
- Non-governmental tribunals
- Commissions of inquiry
- Research, surveys [questionnaire, document review, observation]

The usual forms of fact-finding are:92

- a. interview – this can be individual or group interviews
- b. ocular inspection – provides the documenter with visual and material proofs that can be used to corroborate or contradict claims by some informants; camera to take photographs and video are usually used to record these, and carefully noted in the documenter's report
- c. collection and review of relevant documents such as affidavits, medical records, company profiles, related cases
- d. photo documentation
- e. use of other recording instruments such as those for audio and video recording

### 2. Data analysis and Conclusion

Data analysis will help in identifying causes, issues and solutions, and strategies for advocacies or actions.

Stages in summarizing and organizing information:93

- a. Immediately summarize and organize information after the investigation, interviews, or fact finding, to produce documents like testimonies and report of findings.
- b. Produce records in the factsheet.
- c. After the collection of data on a sufficient number of events, a general report can be drafted to show trends or a wider picture of the human rights situation through time within a geographic area and/or on a certain theme.

In criminalization cases, analysis of facts should consider:

- a. Impact of criminalization to the victim's family and community?
- b. How the family and the community responded to the impacts of the events?
- c. How does the criminalization incident figure in a wider picture? Is there a trend in the community or nationwide? What are the drivers of such criminalization?

<b>3. Writing of the Report</b>	
Basic contents:	
a.	Finalize the factsheet.
b.	Describe the impact of the incident on the individual and collective rights of Indigenous Peoples (i.e., land rights, livelihood, socio-cultural practices, socio-political systems, environment).
c.	Cite laws used to criminalize.
d.	Cite related human rights that were violated.
e.	Identify gaps and needs in protection and security.
f.	Trends
g.	Conclusions and Recommendations

### Fact-finding/Investigation: Fact Sheet on Criminalization Cases

Gathering of information in relation to criminalization cases may pose some challenges and even risk to the security of all concerned. Information may not come easily, thus strategies must be devised to gather as much information as possible about the incident without endangering lives and property.

The following are recommended information and documents to gather. It is also highlighted here that verification of data is essential, as well as the confidentiality of information and sources of information, when lives and security of persons are at stake.

<b>1. Information about the victim/s</b>	
<ul style="list-style-type: none"> <li>Name, Middle Name, Surname</li> <li>Gender (Male, female, other)</li> <li>Aliases or other names used</li> <li>Age; birth date</li> <li>Civil Status</li> <li>Address</li> <li>Occupation</li> <li>Nationality</li> <li>Ethnicity</li> <li>Religion</li> </ul>	<ul style="list-style-type: none"> <li>Distinguishing marks</li> <li>Height</li> <li>Weight</li> <li>Livelihood</li> <li>Affiliations/Organizations</li> <li>Information on dependents and members of the family (names, ages of spouse and children)</li> <li>Include photograph/s if available or accessible</li> </ul>
<b>2. Alleged Perpetrators: State Actor/Non-State Actor</b>	
<ul style="list-style-type: none"> <li>Name and details of Perpetrator/s, if known</li> </ul>	<ul style="list-style-type: none"> <li>Include the position, department, unit/branch if military or police</li> <li>Indicate whether armed/unarmed; types of weapons</li> <li>Gender (male, female, others)</li> <li>Civil status</li> <li>Official address (include personal address when available)</li> </ul>

<ul style="list-style-type: none"> <li>Additional information</li> </ul>	<ul style="list-style-type: none"> <li>Badge</li> <li>Height/weight;</li> <li>Identifying marks/description</li> <li>Photographs/Sketch of perpetrator/s</li> </ul>
<ul style="list-style-type: none"> <li>How is the victim related to the perpetrator?</li> </ul>	<ul style="list-style-type: none"> <li>Is the perpetrator known to the victim?</li> </ul>
<b>3. Nature and Circumstances of Violation</b>	
<ul style="list-style-type: none"> <li>Act/s of violation committed</li> </ul>	<ul style="list-style-type: none"> <li>Identify the incident, for example, killing, arrest, torture, filing of trumped-up charges, etc.</li> </ul>
<ul style="list-style-type: none"> <li>Human Rights violated</li> </ul>	<ul style="list-style-type: none"> <li>Identify the pertinent rights violated, including collective rights of Indigenous Peoples</li> </ul>
<ul style="list-style-type: none"> <li>Summary of incident:</li> </ul>	<ul style="list-style-type: none"> <li>Be concise but comprehensive –Ask the Who, What, When, Where, Why and How questions</li> </ul>
<ul style="list-style-type: none"> <li>Motive for the violation</li> </ul>	<ul style="list-style-type: none"> <li>In criminalization cases, the perpetrators are often driven by other related causes that motivate the acts of criminalization. It is important to gather information about this, if possible.</li> </ul>
<ul style="list-style-type: none"> <li>Additional information</li> </ul>	<ul style="list-style-type: none"> <li>Date of incident</li> <li>Place of incident</li> <li>Circumstance prior to the incident/ background information</li> </ul>
<ul style="list-style-type: none"> <li>Sources of information</li> </ul>	<ul style="list-style-type: none"> <li>Ensure confidentiality and security of persons who provide information</li> </ul>
<b>4. Actions Taken (by any person or group towards any form of redress)</b>	
<ul style="list-style-type: none"> <li>Actions taken in response to or after the incident of violation</li> </ul>	<ul style="list-style-type: none"> <li>Actions by victims/families/communities, local government, perpetrators</li> <li>Developments in the actions taken</li> </ul>
<b>5. Gathering of Evidence and other documents</b>	
<p>In gathering information and documenting actual incidents for cases that will be filed before the court or quasi-judicial bodies, it is important to gather the following documents and information. Include sources of documents/information and methods of verification, with strict consideration to security and confidentiality of sources.</p>	
Information pertaining to:	
<ul style="list-style-type: none"> <li>Perpetrators</li> </ul>	<ul style="list-style-type: none"> <li>Statement /Affidavit of persons who saw, heard or otherwise perceived the killing, the uniform, badge or nameplate of person(s) responsible, and the face of person responsible and recognized by him/her</li> <li>Photograph of sketch of perpetrator</li> <li>Recording</li> </ul>

<ul style="list-style-type: none"> <li>• Case/Incident</li> </ul>	<ul style="list-style-type: none"> <li>• Warrants (arrest or search)</li> <li>• Scene of the Crime Operation (SOCO) Report</li> <li>• Investigation/Police report/Post-operations report</li> <li>• Medical Certificate</li> <li>• Autopsy Report</li> <li>• Forensic evidence</li> <li>• Death Certificate</li> <li>• Police Blotter</li> <li>• Court records, including charge sheets, complaint forms, petitions, answers, motions</li> <li>• Official statements from any government agency</li> </ul>
	<ul style="list-style-type: none"> <li>• Documents left behind by the victim, if any</li> <li>• Objects in the crime scene (weapons, bullet shells, etc.)</li> <li>• Statement of witnesses</li> <li>• Statement of persons who can provide information on the circumstances surrounding the killing (e.g., precedents, antecedents), such as eyewitnesses, other witnesses, relatives, community leaders, lawyers, journalists, medical personnel, prosecutors, local human rights activists, members of religious institutions, members of political parties, civil rights groups, etc., members and officials of the police force, other police and judicial representatives, members and officials of the army, and members and officials of armed opposition groups</li> </ul>

6. Campaigns and advocacy by any person or group		
Agency ( Specify actors)		
Victim/s		
Family		
Community		
Government agency (identify)		
Local Government Agencies and authorities		
Other support groups (identify)		

**Confidentiality and security of sources and witnesses**

It is important to ensure confidentiality of the sources of information and documents, and information about the witnesses. In criminalization cases, their lives and that of their families are often at risk.

It is recommended that written consent is acquired from the victim/s, their family, the witnesses or other sources, if their identities and the information they provide will need to be divulged or made known to third parties.

## Protection of Victims, Witnesses and other Persons in Criminalization Cases

**Protection** is the “application of all measures that can contribute to preventing or minimizing the risk of harm and/or reduce any threats that can jeopardize the life or physical integrity of cooperating persons and/or stop harm being inflicted on them.”<sup>94</sup>

**In cases of criminalization, protection and security should be ensured for the following:**

- Victims, witnesses and sources of information of incidents of criminalization;
- Human rights defenders including staff of civil society organizations and NGOs who are conducting fact-finding or documentation and monitoring activities, or providing other forms of support;
- Other persons on the field who are providing assistance to human rights defenders in their work, like interpreters, photographers, drivers, etc.
- Persons who are at risk by virtue of their association with a person belonging to any of the groups described above, such as family members or friends; and
- Indigenous community leaders and other persons who belong to the same community as the person/s described above.

**Ensuring protection and security is a shared responsibility by:**<sup>95</sup>

- The duty bearers, primarily States and armed groups, which have the obligation to respect, protect and fulfill human rights norms and standards;

## Key Concepts

- The primary responsibility for protecting victims, witnesses, sources of information and other persons cooperating with human rights field presences and other international human rights monitoring mechanisms rests with the State.
- The protection of victims, witnesses and other cooperating persons is an integral aspect of all phases of the monitoring cycle, from the gathering of information and interviewing through to reporting and advocacy for corrective action.
- Prevention is key in protecting victims, witnesses and other cooperating persons. At a minimum, it requires respecting fundamental principles and methods of work, which enable human rights officers (HROs) to undertake human rights monitoring and fact-finding activities in a manner that does not jeopardize the safety of those who come in contact with them. Where there is a risk, it must be carefully assessed and weighed against the expected benefits of the activity in question.
- There is no single correct approach to protection. The appropriate protection strategy will depend on the political and security environments, the commitment of the national authorities, the national witness protection framework, and the capacity and resources of the field presence, among other contextual factors.
- To better protect a cooperating person at risk, HROs should focus their efforts on decreasing the level of risk by, on the one hand, reducing the threat and the vulnerability factors and, on the other, increasing protection capacities. HROs should aim at strengthening the position of the person at risk and weakening that of the source of the threat.
- HROs may respond to protection concerns by taking measures at the national and international level, such as strengthening local protection networks, engaging with the national authorities, intervening with the source of the threat and transmitting concerns to international human rights mechanisms. Relocation should be considered only as a last resort.
- The United Nations Human Rights Council has urged States to prevent and refrain from all acts of intimidation or reprisals against those who have provided testimony or other information about human rights violations to the United Nations.

Source: *Manual on Human Rights Mechanisms*, Office of the High Commission on Human Rights, Geneva, 2011.

- The victims, witnesses and other cooperating persons, who may face threats or be subjected to reprisals; and
- Those who can positively or negatively influence the safety and well-being of cooperating persons at risk, and directly or indirectly strengthen their protection (e.g., field presence, human rights mechanisms, diplomatic missions, multilateral institutions, and NGOs).

**Protection against any form of human rights violation is a right.** It is the State that bears the primary responsibility to ensure this protection. However, when a State fails in its obligation as human rights duty bearer, civil society and NGOs play a key role in providing assistance for protection. Individuals and the community themselves must also step-up to put measures in place for their own protection and develop strategies to prevent or minimize risks and exposure to human rights violations.

### Guiding principles in the protection of victims, witnesses, human rights defenders, families and other persons:<sup>96</sup>



1. **Respect for confidentiality** is fundamental. Any breach of confidentiality should be taken seriously as this can cause adverse consequences to the victims, witnesses, other sources of information, communities, and human rights defenders. Organizations should have a clear policy on confidentiality that includes a provision that unless consent is given to make information public, all information should be treated as confidential.

2. **Do no harm.** Organizations and persons conducting documentation and monitoring have the obligation not to jeopardize the life, safety and well-being of victims, witnesses, communities and other sources of information. Awareness of potential risk of harm and exercise of good judgment, caution and cultural sensitivity in all activities must be observed. In certain cases, when the risk of harm to a person is too great, organizations and documenters should prioritize safety over the need to gather information, especially when data can always be acquired from other sources.

3. **Do not raise expectations.** Documenters must be clear with what they can and cannot effectively do, and make sure not to raise any wrong expectation from the victims, witnesses, communities and other sources of information. This must be made clear at the outset, so that the victims, witnesses, communities and other persons may objectively determine whether to provide information or cooperate in the documentation, taking into consideration any security risk to themselves.

4. **Participatory risk assessment.** A thorough risk assessment should be conducted to assess the level of threat or risk of harm to victims, witnesses, communities, families, human rights defenders, documenters, and other related persons. The objective is to identify factors that can impact on the safety and well-being of all persons involved. The assessment should be participatory in approach and thus include all persons involved (victims, witnesses, communities, human rights defenders, etc.). More than anyone else, these persons involved would be more knowledgeable or more aware of the security environment, the threats that they face and the risk of harm to them. They too may know what protection measures they need, or are comfortable with, or to put in place for their own safety.

5. **Know the local context.** Knowing the local, regional and national context of the country is important since protection is context-based and context-specific. This includes the political and security environments, commitment of national authorities and State forces, witness protection framework, capacity and resources of human rights defenders and documenters, information on legal support, and even the geographical and topographical features of the place. Do these pose any security threat or protection measure?

6. **Security of information and communications.** Interception of communications has become too easy with digital and online methods of communication. Digital data storage is at high risk of being corrupted, intercepted or copied. Phones and computers can even be accessed remotely without the knowledge or consent of the owner.

Measures to protect information and communication should be put in place that may include:

- Regular change of passwords
- Refrain from storing sensitive information in your phones or computers.
- Use messaging and email applications that have end to end encryptions.
- For sensitive topics, use face-to-face meetings over telephone communications.
- Avoid using public and unsecured wifi.

- Use phones without GPS features, or disable tracking features in phones or other gadgets that have these.

7. **Self-protection measures.** Protocols are important to prevent human rights violations and provide immediate response, including sanctuary when necessary. This may include:

- Maintaining a directory of contacts in case of emergency situations, including lawyers, police, local government officials, community elders, etc.
- Identifying sanctuary places where persons can take refuge.
- Establishing a buddy system where each one looks after another.

## **PREVENTIVE MEASURES IN DATA GATHERING/INTERVIEWING<sup>97</sup>**

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Certain matters need to be considered to prevent or avoid harm or threats at various stages of the documentation process:

### **1. Planning**

- a. The victims, witnesses and sources to contact
  - Who should be prioritized during the information gathering process?
  - Is the victim, witness or source to be contacted vulnerable or part of a group with special needs (e.g., a child, a person with disabilities, a detainee)?
  - Is the victim, witness or source accessible?
  - Is there a need for interpretation/translation?
- b. The risk of harm
  - Is the victim, witness or source likely to face threats or be subjected to reprisals?
  - What are the security and/or vulnerability factors that may expose him or her to risk of harm?
  - Is there a history of intimidation?
  - What is the capacity and/or commitment of the duty bearers to respond to protection concerns?
  - Can preventive or protective measures be taken to minimize the risk of harm?
  - Can the information likely to be gathered from the victim, witness or source be obtained elsewhere?
  - What self-protection measures is the victim, witness or source able to take?
- c. The initial contact
  - What is the most appropriate and safest method to establish contact with the victim, witness or source?

- Should contact be established directly or through a third party/intermediary?
  - Should interaction with the victim, witness or source be visible or discreet?
- d. The interview and follow-up
- Where will the interview take place?
  - Can the venue guarantee confidentiality?
  - Is it possible to maintain regular contact with the victim, witness or source after the interview?

## 2. **Prioritizing contacts**

- Prioritize the victims, witnesses or sources who are likely to provide relevant information to fulfill the monitoring objective, particularly those who are likely to be accessible;
- Necessary skills and appropriate persons, time and environment in interviewing groups or persons with special needs, i.e., women, children, persons with disabilities, victims of sexual violence, etc.
- Possibility of contacting victim/s, witnesses or other sources, taking into consideration security and physical accessibility;
- Determine if the victim/s, witnesses, or other sources will face reprisals, threats and harassment as a result of meeting with organizations, investigators, lawyers, etc.
- Capacity of victim/s, witnesses or other sources for self-protection;
- Level of protection from State or its agencies;
- In case of risk, if information can be obtained from other reliable sources, avoid contact with persons at risk. If information is not available from other sources, this may be collected through trusted organizations or persons based in the same location of the incident, the victim/s, witnesses and other sources.

## 3. **Initial contact**

- Victims, witnesses or sources should at all times be treated with utmost respect, dignity, and professionalism;
- Preventive and protective measures should be scrupulously adhered to before, during, and after contact with victims, witnesses or sources;
- Upon contact, victims, witnesses or sources should be duly informed of the mandate and activities of the fact-finding/investigation, and made aware of the principle of confidentiality;
- A clear and accurate explanation should be given on the limitations of the fact-finding/investigation to provide protection if those who come into contact with interviewers face threats or are subjected to reprisals. No unreasonable expectations should be raised.

Contact may be done directly with victim/s, witnesses and other sources, or through intermediaries, or voluntary appearance/unplanned contact.

#### 4. Using discretion or visibility

- Use careful discretion to determine whether to conduct interviews and other fact-finding activities discreetly or publicly, in consideration of security threats and risk of harm. Use all efforts to draw the least attention. In other instances, overt fact-finding activities and investigation may be the better option when such activities will have an impact on preventing further harassments by drawing attention to the issues and discouraging perpetrators from posing further threats.

#### 5. Minimizing exposure

- Not being vocal about the purpose of a visit to a certain location or the identity of the person to meet/interview;
- Blending in with the local environment as much as possible;
- Requesting trusted partners or an intermediary in the community to facilitate the meeting/interview by directly contacting the victim, witness or source and accompanying them to a predetermined private venue;
- Entering the agreed venue beforehand and separately from the victim, witness or source;
- Conducting a meeting with a wider number of individuals, to deflect attention from the person that documenters would actually want to interview.

#### 6. Organizing and conducting interviews

- Find an adequate, appropriate and safe venue to conduct interviews.
- Participants in the interview should be kept at a minimum. This will ensure confidentiality and protection; avoid the possibility of someone reporting about the interview and endangering the sources of information, or lessen pressure on the person being interviewed.
- During the interview, unless express consent is given otherwise, interviewers should not refer explicitly to statements by other victim/s, witnesses or other sources to avoid doubt as to the confidentiality of information or identity of sources.

When concluding the interview, it is essential to:

- Obtain informed consent on the use of the information provided; the type of consent given by the interviewee should be clearly stated in the interview report.
- Discuss with the interviewee what preventive or protective measures they may take to avoid any reprisals as a result of the interaction with interviewers. For example, interviewees

may be advised to always inform someone about their whereabouts, or to take other self-protective measures.

- Clearly inform the interviewee of the limitations of the documentation/fact-finding/investigation in providing protection if they face threats or are subjected to reprisals.
- Provide the interviewee with useful contacts in the community that could offer different types of assistance (e.g., protection networks) of local authorities, if they can be trusted.
- Discuss with the interviewee the means to keep in touch, example, phone numbers, office address, email addresses.
- Arrange for a follow-up meeting when required and/or possible.

## 7. Visiting places of detention

Preventing threats or reprisals against persons in detention is challenging because of the limited mobility and compromised safety and security in prisons. Additional preventive measures should be used such as:

- Gather enough information on the functioning of the facility.
- Conduct more than one visit to have a sense of the facility, establish good relationship with guards to facilitate confidentiality of interviews, and lessen risk of harm or reprisals.
- Interviewers may select random interviewees, or conduct interviews in a group, or when detainees are few, by interviewing them all. This will lessen the singling out of specific persons as sources of information.
- If the venue of interview identified by authorities seems to be at risk (with surveillance cameras for instance), request for an alternative venue like an open ground, that is at a distance from guards.
- When interviewing persons who were tortured or physically abused, use a venue that is out of sight of guards so they will not see the victim showing their injuries.
- When an inmate raises a human rights violation concern, do not disclose publicly unless given express consent to do so.
- Always observe the principle of **do no harm** before, during and after interviews at detention centers.
- Informing the prison authorities that follow up visits will be conducted may diffuse any ill-treatment; but make sure to conduct these visits.

## 8. Regular monitoring

- Monitor the safety and well-being of victim/s, witnesses and other sources of information that were in contact with interviewers.
- Partnership or coordination with a local organization may be established to check regularly on the victim/s, witnesses, and other sources of information.

- Consent may be sought from the detainee so that their information is passed on to local organizations, human rights institutions, and other groups who may follow up on them in the context of their work.
- In the documentation report, include the best way to maintain contact and monitoring with the victim/s, witnesses and other sources of information.

## 9. Establishing a protection team

- If resources and capacity allow, create a team dedicated solely to protection concerns involving persons engaging with or having contact with interviewers.
- In the documentation report, include the best way to maintain contact and monitoring with the victim/s, witnesses and other sources of information.

## **PROTECTION OF INFORMATION, DOCUMENTS, EVIDENCE<sup>98</sup>**

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The gathering and protection of information, documents and evidence follow similar guidelines in the interviewing and protection of victims, witnesses and other persons. Secure information management and storage systems should be set up to store, manage, and protect confidential and sensitive information, and to preserve evidence.

### 1. Safe recording of information

- Recording may be done on paper/notebooks/written notes, computers, digital cameras or audio and video recorders. Interviewers use discretion in choosing the best way to record information without posing any security risk to the victim/s witnesses, and other persons.

#### Cameras and audio or video recorders

- Cameras, audio and video recorders may be used only with the express consent of the interviewee and when these do not present any security concerns.
- Conceal faces of individuals, especially children, in photos and videos.
- Avoid taking photograph or filming the faces or any other images that may disclose the identity, location or place of residence of a person/s, especially children. Faces can be blurred or cropped.
- Record the date, time and place when the photo, audio or video was taken, without posing any security threat to the victim/s, witnesses or other persons.
- In other circumstances especially when there is a high level of threat, taking a photograph

and filming a person can be a means of self-protection. In these situations, there should be thorough discussion with the person to identify the best method to guarantee their safety, the safeguard and use of the recording.

- **In audio recording**, the name and personal circumstances of the interviewee should not be recorded, instead put on a separate form like written notes, or codes may be used, to avoid connection between the interviewee and the recording.
- Measures should be adopted to secure the recording and prevent it from being accessed by unauthorized persons or confiscated.
- In shooting physical evidence (photos/videos), make sure to label the evidence and indicate the time and place where it was taken, ensuring that a witness is present during the recording.

### Physical evidence

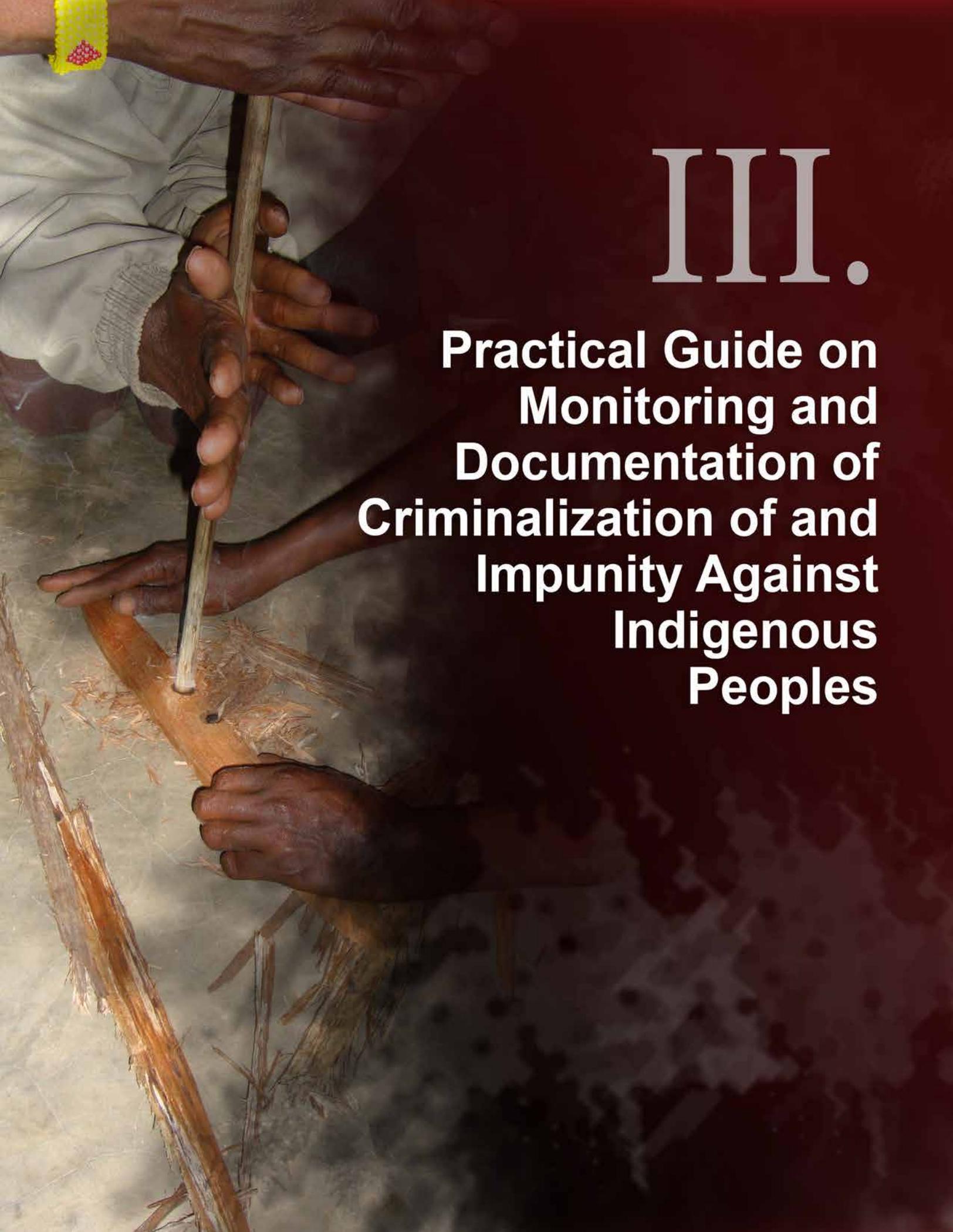
- Handle the objects with gloves to avoid contamination of evidence.
- Place objects in a plastic bag with proper labeling.

## 2. Safe storage and handling of information

A system of storage and guidelines on the handling of information should be put in place to prevent any breach or unauthorized access to the information that might jeopardize the sources of information, the case, or even the persons who gathered the information and the organization that is safekeeping it. Measures for safe storage and proper handling of information may include:

- **Confidential and sensitive information** should be securely stored and preferably encrypted. If these are digital or electronic in format, it can be stored in a shared drive or a secure system linked to a server from where information can be retrieved remotely. In case of evacuation, confidential and sensitive information should be transported safely. In case this is not possible and there is a risk that this information will fall on the wrong hands, destroy the information. Digital or electronic information should be deleted with the help of an expert to prevent retrieval.
- **Photographs, videos and audio recordings** must be stored in a secure encrypted storage System.
- **Notebooks and written notes** should not be left unattended and should be shredded or burned after the information is typed or scanned.
- **Hard copies and other physical evidence** should be stored in lockable filing cabinets with restricted access. Filing system for documents and objects should not be displayed outside of the drawers.
- For **computers** and other similar electronic devices, security safeguards, including the use of passwords or encryptions, should be used.

- **Mobile phones** should not be used to exchange confidential or sensitive information;
- **Transportation** of confidential and sensitive information should be planned when traveling from the field to the office. Secure transmittal through the internet can be done to avoid carrying them physically (except of course for object evidence). Plans should be clear when roadblocks and checkpoints are encountered along the way;
- **Laptops and other recording devices** should not be left unattended, especially while on field;
- **Do not peruse** confidential or sensitive information in public places, i.e., restaurants, bus terminals, airports, as these can be read by others or left inadvertently.



# III.

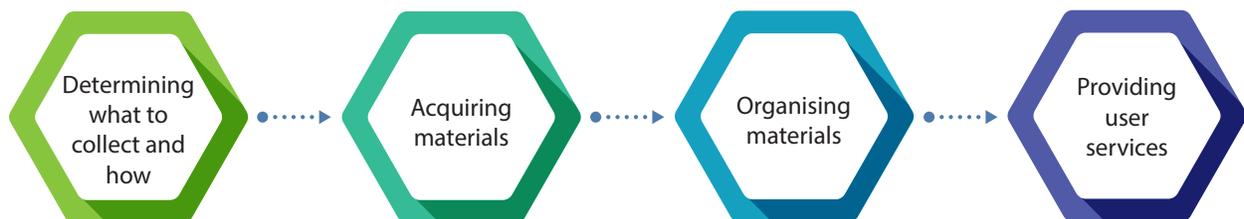
## **Practical Guide on Monitoring and Documentation of Criminalization of and Impunity Against Indigenous Peoples**

**D**ocumentation is the act of gathering information or fact-finding to establish truth. It “is the process of systematically recording, reporting and safekeeping of the results of an investigation or fact-finding in relation to an event or number of events.”<sup>99</sup> Documents may be textual or non-textual, published or non-published. Documentation consists of several activities, including:

- a. **Determining** what information is needed and establishing means for acquiring it, including where to acquire it;
- b. **Recording** the discovered information and storing such in appropriate containers (called documents) or collecting already-existing documents containing the needed information;
- c. **Organising** the documents to make them more accessible; and
- d. **Providing** the documents to users who need the information.<sup>100</sup>

One important aspect of good documentation is a process to validate or verify the information gathered to ensure veracity. As a process, documentation has various phases:

**The library-type of documentation has the following phases:**



In investigation-related documentation, there is the additional element of acquiring information on the events being investigated, such as through fact-finding missions, and organising the gathered information. Below are the phrases of investigation-related documentation.



Documentation could also mean a specific part of this process. Thus, documentation could refer to the act of recording information, or the act of collecting and organising documents.<sup>101</sup>

Before going into documentation of cases of criminalization and impunity, it is important to have a good understanding of the general situation of Indigenous Peoples and their rights in your specific country to establish a good foundation for the documentation, monitoring and reporting of specific cases and trends of rights violations. The general situation may be developed through a good documentation or research covering:

1. The statistics on Indigenous Peoples in your country, if available. If available, is there any gap in the information and how should this gap be addressed? If not available, why is it not available and how should this be addressed?
2. The country's legal framework that covers the laws and policies on Indigenous Peoples that are affecting them. Make an assessment on whether these laws and policies are in line with international human rights standards, if these are adequate and effective in protecting Indigenous Peoples' rights, and if these are consistently enforced and implemented. Identify gaps and challenges and how these should be addressed.
3. List the international human rights instruments ratified or adopted by your country, more specifically the UNDRIP and ILO Convention 169. Review how your country is performing under the international human rights treaties. You may do this by investigating if the country is submitting reports to human rights treaty bodies and if these bodies have issued recommendations to your country. Find out too, if these recommendations by international bodies are making any impact on laws and policies at the national level.
4. Does your country have a national human rights institution (NHRI) or a national agency on Indigenous Peoples? If there is, find out the level of their independence and the degree of efficiency to protect Indigenous Peoples' rights. Identify whether you can depend on these institutions or agencies for the protection of Indigenous Peoples' rights and in finding redress for violations.

Documenting violations of Indigenous Peoples' rights often involves establishing the profile of the affected indigenous community/communities and an understanding of the legal framework relating to Indigenous Peoples so that the link to international human rights instruments can be made.<sup>102</sup>

Once you have a comprehensive grasp of the general situation of Indigenous Peoples in your country, the documentation of cases of criminalization and impunity will be supported by a strong knowledge of the rights, conditions and opportunities for Indigenous Peoples. The

Documenting human rights abuses is the heart of human rights work. The effectiveness of human rights as a tool depends on the accuracy and comprehensiveness of the evidence gathered. It can contribute to educating and organizing as well as advocating at a political or legal level. Government leaders have been brought down through documentation of human rights violations; the power of the process, both for the victim and the perpetrator, should not be underestimated.

*(Karyn Kaplan, Human Rights Documentation and Advocacy: A guide for organizations of people who use drugs, Open Society Institute, 2009, page 25)*

information needed in documenting criminalization and impunity cases should include the following:

1. If a case is filed against the victim of criminalization, gather all documents from the courts or quasi-judicial bodies where the case is pending. Identify the laws used against the victim and the corresponding right violated by the law.
2. If the victim of criminalization was arrested, establish whether the right to liberty and security of the person was respected, and the rights under Article 9 of the International Covenant on Civil and Political Rights are respected:

**Article 9**

- a. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.
  - b. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and shall be promptly informed of any charges against them.
  - c. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
  - d. Anyone who is deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, for the court to decide without delay on the lawfulness of the detention and order their release if the detention is not lawful.
  - e. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
3. If the victim of criminalization is detained, determine whether their rights under Article 9 of the ICCPR quoted above, and Article 10 of the same Convention, was respected and followed:

**Article 10**

- a. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
  - b. (i.) Accused persons shall, except in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.  
  
(ii.) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
4. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.
  5. Where there is patent impunity of human rights violations, include in data-gathering or fact-finding, the following:
    - a. Names of public officials or employees who are condoning, or refusing to act on cases of human rights violations;
    - b. Identify the laws or policies violated by the perpetrators of human rights violations and the possible legal actions that maybe taken to bring the perpetrators to account for the said violations;
    - c. Establish the actions of public officials or employees to prove the existence of impunity; and
    - d. Determine the factors that perpetrate the environment of impunity

The **purpose of documentation in criminalization of and impunity** against Indigenous Peoples, is to establish the rights of the victims as protected under international human rights or domestic laws if available, and demand for the respect and fulfillment of these rights from duty bearer, as well as call for accountability of perpetrators of human rights violations towards the main goal of preventing criminalization and combatting impunity.

All information gathered or documented may be used for the following purposes:<sup>103</sup>

- Capacity building and awareness-raising
- Standard-setting
- Direct assistance to victims
- Pursuit of justice
- Establishment of historical records and trends

Public education and capacity building require strong reference to international human rights laws or treaties, the UN systems including treaty reporting processes, and Special Mandate mechanisms.

These are equally needed in standard-setting to push for implementation of international conventions at the national level through legislative and policy actions or reforms, and monitoring of government compliance to the international treaties.<sup>104</sup>

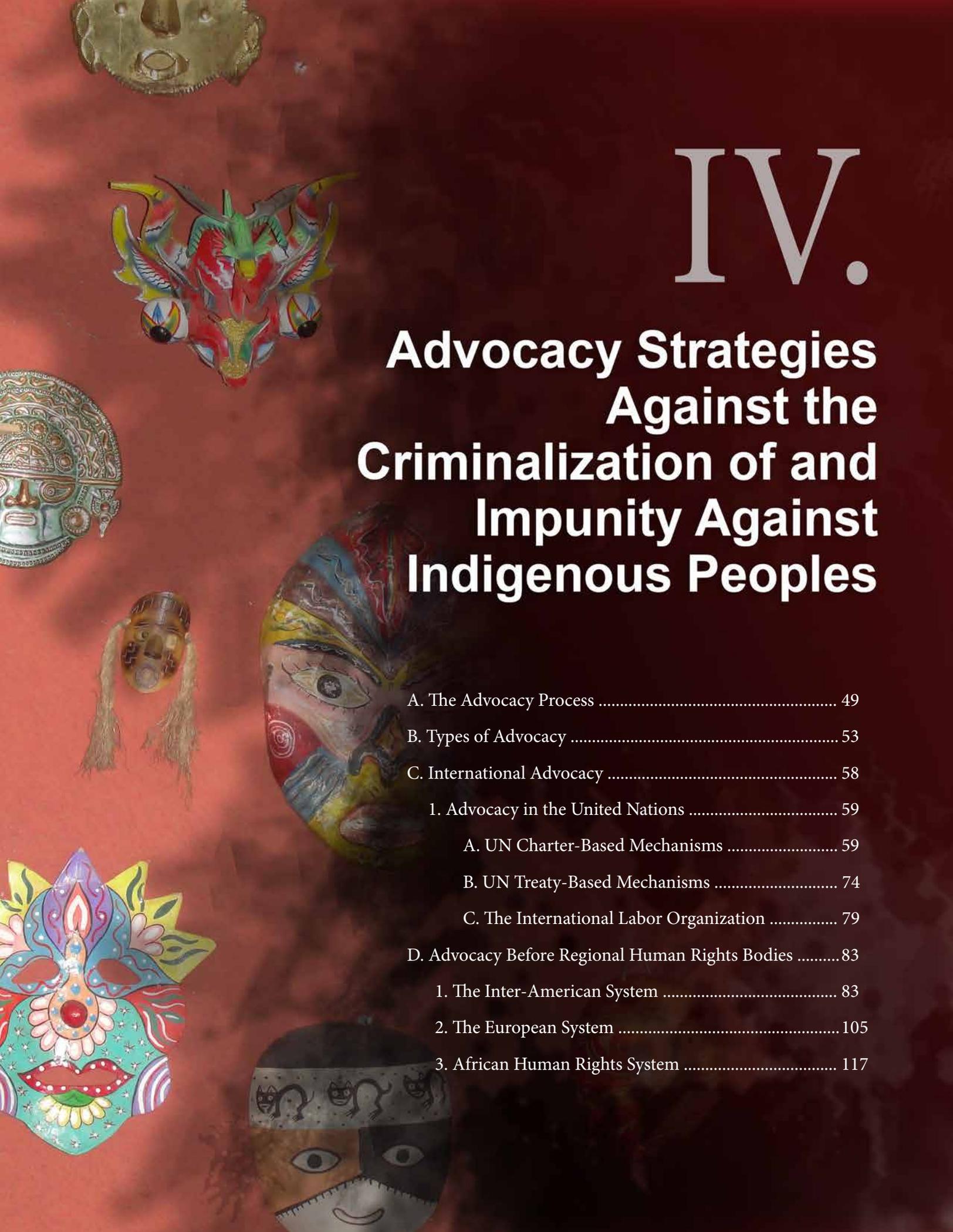
A good documentation is important for organizations and human rights defenders in determining the assistance that can be provided to victims. In criminalization cases, immediate assistance may include providing a lawyer, filing of a petition for *habeas corpus* or for a *writ of amparo*, providing sanctuary or medical assistance, financial support, psycho-social therapy or even launching a campaign.<sup>105</sup> In case of rights violations under detention or during arrest, seeking relief, redress and compensation can be part of the response. Justice is not just about seeking protection and relief for victims but also accountability of perpetrators.

Moreover, **good and credible documentation** that is sustained and supported by hard evidence can be used for actions before national, regional and international fora. **Therefore, it is important to ensure a process or system of verification and validation to ensure that information gathered or received are correct.** Building up a memory of violations will also address any attempt at historical revisionism to cover up human rights violations under repressive regimes. Examples of these are the work of Memorial that compiled the human rights violations under Stalin in the Soviet Union, and the documentation and recording of human rights groups in Rwanda on the mass killings or genocide in 1994.<sup>106</sup>



Systematic documentation that can enable groups to combine pieces of information from various sources is also crucial in bringing perpetrators to justice. For example: at the end of 1986 in Argentina, the government passed the so-called "Ley de punto final," stipulating a time limit of 60 days for the presentation of any further accusations of violations committed in previous years. After this time limit, any punitive action against those incriminated would cease, eliminating prospects for investigations on the situations of detainees and missing persons. Human rights organisations turned to the documentation system used in Buenos Aires by CELS (Centre for Legal and Social Studies). In the CELS formats, perpetrators were identified in terms of time, the incidents reported, place, roles of persons involved and official posts. The use of formats with thorough analysis greatly improved the determination of personal responsibility of suspected perpetrators.

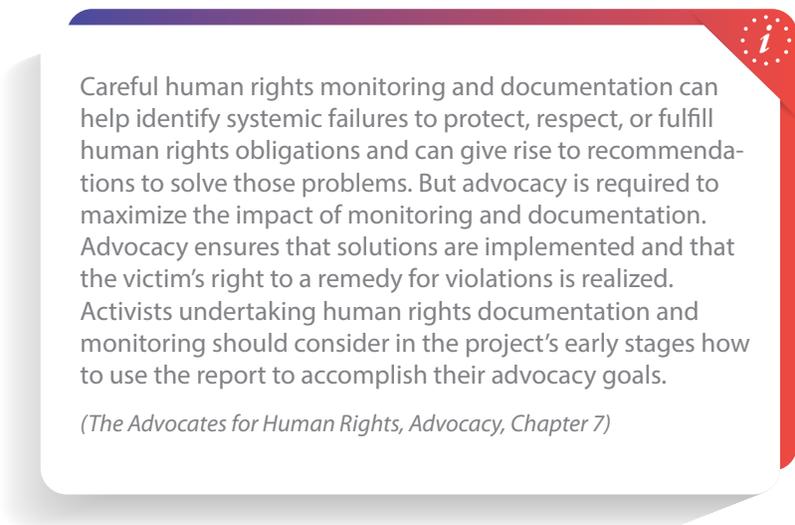
*(Manuel Guzman and Bert Verstappen, What is Documentation, Human Rights Information and Documentation International - HURIDOCS, 2003.)*



# IV.

## Advocacy Strategies Against the Criminalization of and Impunity Against Indigenous Peoples

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Careful human rights monitoring and documentation can help identify systemic failures to protect, respect, or fulfill human rights obligations and can give rise to recommendations to solve those problems. But advocacy is required to maximize the impact of monitoring and documentation. Advocacy ensures that solutions are implemented and that the victim's right to a remedy for violations is realized. Activists undertaking human rights documentation and monitoring should consider in the project's early stages how to use the report to accomplish their advocacy goals.

*(The Advocates for Human Rights, Advocacy, Chapter 7)*

Advocacy is a set of organized actions aimed at influencing public policies, social attitudes, or political processes.<sup>107</sup> It relies heavily on good documentation, monitoring, and consultation or consideration of concerns of various stakeholders to have a solid ground for take-off. The purposes of advocacy on criminalization and impunity include policy and legislative reform to decriminalize or respect Indigenous Peoples' exercise of their rights and make accountable those who violate these rights.

Advocacy may include the following:<sup>108</sup>

- Enabling and empowering people to speak for themselves;
- Supporting a policy and persuading those with power to act in support of the policy at local, national, and international levels;
- Gaining and exercising power to influence a political action; and
- Organizing efforts by citizens to influence the formulation and implementation of public policies and programs by persuading and pressuring state authorities, international financial institutions, and other powerful actors.

## A. THE ADVOCACY PROCESS



In defining your **goals** for a specific advocacy campaign, you will always be guided by the overall goal, which is to stop criminalization against Indigenous Peoples and end impunity. The specific goals will be defined by practical and achievable actions that can effect change at all levels. These goals may be short-term, intermediate or long-term. There are a couple of questions that you will need to address in defining your goals: (1) What will the advocacy aim to effect a change towards the achievement of the overall goal? (2) What are the intended impact and consequences on the rights of Indigenous Peoples?

An advocacy goal should be Specific, Measurable, Achievable, Relevant, Timed, and Challenging (SMART + C).<sup>109</sup> It should also do the following:<sup>110</sup>

- Relate back to the human rights monitoring mandate
- Reflect the findings from the documentation phase
- Be developed in collaboration with partners and other stakeholders; and
- Express desired change in terms of human rights language

A good **advocacy strategy** hinges on having a good grasp of the underlying causes of criminalization and impunity including the legal, social, economic and political root causes. Most often, there is a historical narrative to criminalization of Indigenous Peoples that is reinforced by systemic discrimination. The advocacy strategy clarifies the steps to achieve the advocacy goal; identifies the essential human rights that need to be protected; the persons or entities who have the power or authority to make change happen; and measures to address or minimize challenges in the achievement of the goal.

While strategies may range from less confrontational like awareness raising to most confrontational like blockade, it is important that the strategy optimizes the help of your allies without antagonizing them and produces the kind of change you want of your opponents.<sup>111</sup>

It is also important at this stage of the advocacy to coordinate all efforts around the issue being addressed. More often, there is more than one person or organization taking action on a certain issue. Identify these persons or organizations and their efforts, and agree on coordination, linkage, and support with them. Building a network that effectively works towards a common goal will strengthen the campaign.

**Leadership and organization** in an advocacy campaign refers to the human and non-human resources, their availability, capacity and sufficiency. The leadership may refer to a person, an organization, a coalition or network of organizations or persons, depending on what is assessed as best suited for the specific advocacy. Human resources and their capacity to launch a successful campaign are important as well as having enough resources that can sustain the advocacy until its final stages. Even in campaigns involving more persons and organizations, the essence of good leadership and organization can shape the success of a campaign.

One way to attract attention to an advocacy is to frame a cohesive and powerful **message** that resonates with the target audience and used uniformly by all advocates and allies in all the advocacy-related activities. Having a common message results in a stronger voice and a wider reach. Framing the message may vary depending on the target audience's interest to steer them to take a specific action. Basic messaging, however, should be anchored on international human rights standards, so it is important to note the appropriate human rights instrument to refer to.

As you plan tactics, it may be useful to ask yourselves these questions about each of them:

- What will be the scope of this action?
- Who will carry it out?
- When will the action take place, and for how long?
- Do we have the resources to make it happen?
- What resources are available?
- Which allies and constituents should be involved?
- Which individuals and organizations might oppose or resist?

*(Developing a plan for advocacy, Community Tool Box, <https://ctb.ku.edu/en/table-of-contents/advocacy/advocacy-principles/advocacy-plan/main>)*



In the Philippines for instance, the campaign against criminalization of activism has been using a short, clear, but strong message: **Activism is not terrorism**

Source: <https://sa.kapamilya.com/absnews/absbnnews/media/2019/news/12/10/20191210-activist-not-terrorist-jc-3228.jpg>, last accessed on July 19, 2020



Source: <https://uplbperspective.files.wordpress.com/2019/03/activists.jpg?w=1200>, last accessed on July 19, 2020

Good messaging will also facilitate **mobilizing** of all stakeholders to take **action** on the issue. During this phase, the following activities may occur:<sup>112</sup>

- Recruiting advocacy volunteers
- Building a coalition of partner organizations and institutions
- Educating staff, volunteers, and stakeholders about the goals, objectives, and tactics of the advocacy plan
- Carrying out the advocacy strategy and plan
- Taking legal and political actions (in the country of origin, country of residence, and/or international community)
- Taking action with interested and affected groups to secure change Monitoring and evaluating the process
- Continually reexamining and adapting the advocacy plan and messaging

Finally, **assessment and evaluation** are essential to measure success, and to identify gaps and challenges. Intermediate benchmarks to assess progress should have been identified at the initial stage of the campaign and used regularly along the process. The intermediate benchmarks would highlight strengths while identifying gaps that need to be addressed to better attain the advocacy goals. The final assessment will also include how the intermediate gaps or challenges were addressed, along with a comprehensive evaluation of the success of the advocacy.

Certain questions may need to be addressed during evaluation. This may include:

1. Did you obtain expected outcomes?
  - What were the factors that contributed to the positive outcomes and how can you build on these?
  - What contributed to the negative outcomes and how should these be addressed?
2. Were the strategies effective?
  - What were effective and what were not effective? How should you do better for the next action?
3. Are there any actions or commitments that need follow up?
4. What lessons can be learned?
5. What are your ways forward?



## B. TYPES OF ADVOCACY

### 1. Public Education

Objective:	Disseminate information and raise awareness.
Strategies, methods, activities	<ul style="list-style-type: none"> <li>• Poster/billboard campaigns</li> <li>• Conferences</li> <li>• Public demonstrations and protests</li> <li>• Small group meetings with stakeholders</li> <li>• Large community meetings</li> <li>• Staging public hearings in which victims can testify about their experiences</li> <li>• Creating books or pamphlets documenting victims' experiences</li> <li>• Staging public tribunals or mock trials, in which evidence is presented and violators are symbolically held accountable</li> <li>• Intergroup dialogue (led by experienced facilitators)</li> <li>• Working with local movie theaters or libraries to host film screenings of documentaries or human rights related films and arrange post-film talkbacks</li> <li>• Hosting a photograph or art exhibit at a public venue, such as a gallery or coffee house</li> <li>• Working with a local museum to create and lead human rights-themed art tours</li> <li>• Starting a book club with a human rights theme</li> <li>• Social media</li> <li>• Creating a blog on a human rights issue</li> <li>• Starting a Twitter account about the issue</li> <li>• Working with local music venues to host events with cultural and human rights themes</li> <li>• Showcasing original poetry, songs, stories, or essays written by victims of human rights abuses</li> <li>• Creating games and other interactive tools to teach about an issue</li> <li>• Including human rights information on an organization's website.<sup>113</sup></li> </ul>

## 2. Media Advocacy

Objective:	Influence public opinion and policy makers to gather support.
Strategies, methods, activities	<ul style="list-style-type: none"> <li>• Develop strategy and framing</li> <li>• Familiarization with relevant media outlets</li> <li>• Using indigenous and community media where available</li> <li>• Using traditional media tools that include:             <ul style="list-style-type: none"> <li>» Press release</li> <li>» Press conference</li> <li>» Letter to the editor</li> <li>» Op-eds</li> <li>» Editorial board meeting</li> <li>» Interviews<sup>114</sup></li> </ul> </li> </ul>

## 3. Government-Focused Advocacy that covers both political and legal actions

Objective:	<p>Legal and policy reform that includes:</p> <ul style="list-style-type: none"> <li>• Influence policy makers to consult with Indigenous Peoples on all matters affecting them</li> <li>• Lobby lawmakers for the passing of positive laws or the repeal of negative legislations</li> <li>• Push for enforcement of laws and policies protecting Indigenous Peoples' rights</li> </ul>
Strategies, methods, activities	<ul style="list-style-type: none"> <li>• Engagement with legislators and their staff</li> <li>• Engagement with government agencies, especially those working on Indigenous Peoples' rights or human rights in general</li> <li>• Lobbying other countries including through their embassies</li> <li>• Voting or right of suffrage as a form of advocacy that entails a protracted campaign for citizens to register for voting, choose the right candidates and cast their vote on election day</li> <li>• Engaging with inter-governmental bodies like the Organization of American States, the European Union and the African Union, etc.</li> </ul>

#### 4. Advocacy targeting business

Objectives:	<ul style="list-style-type: none"> <li>• Ensure respect of human rights by businesses</li> <li>• Seek corporate accountability for human rights violations committed by business</li> </ul>
Strategies, methods, activities	<ul style="list-style-type: none"> <li>• Engaging governments and inter-governmental organizations to pressure businesses to respect Indigenous Peoples' rights and make them accountable for violations</li> <li>• Engaging shareholders, management or policy makers in businesses to adopt policies that respect Indigenous Peoples' rights</li> <li>• Launching campaigns for the protection of consumer rights/interests</li> <li>• Engagement with UN and other international bodies like the UN Working Group on Business and Human Rights</li> </ul>

#### 5. Social Media Advocacy

Social media tools are numerous and widespread, and have revolutionized various aspects of modern society. They can be used to build, as when it serves as a catalyst for social change, or destroy, as when it is used to attack people's reputations or red-tag or terrorist-tag activists and opposition members.

Definitely, social media has an expansive reach and information is easily and quickly disseminated faster than before. For human rights advocates, getting information using the fastest methods allows them to respond to human rights violations on time, and prevents violations from happening or mitigates impacts of violations already committed. Likewise, social media can aid human rights advocates and organization in reaching out to the widest audience. It can support in terms of information dissemination; calling for actions against human rights violations; and launching campaigns. "Traditional media (newspapers, television, radio) remain an important part of advocacy, but they can be costly, time-consuming, and often limited in reach."<sup>115</sup>



## What is Social Media?

As its most basic, social media is simply any form of media people use to be social. This includes traditional media tools as well as tools from new technology (e.g., text messaging, e-mail, web sites).<sup>382</sup>

Often, when people talk about social media they mean public web-based tools that are continuously updated in a participatory and collaborative manner. These tools vary in terms of anonymity and immediacy.<sup>383</sup> Some common social media “platforms” include:

- Twitter
- Facebook
- LinkedIn
- YouTube
- Instagram
- Reddit
- Pinterest
- Google+
- Blogs
- Listserves
- Internet forums
- Wikis
- Flickr
- Podcasts
- Instant messaging.

*Source: Redrawn from Human Rights Tools for a Changing World: A step-by-step guide to human rights fact-finding, documentation and advocacy, the Advocates for Human Rights, January 2015, p. 135.*

The vast reach of social media makes it essential to maximize its positive social impact for advocacies and campaigns. In developing advocacy plans, it is essential for human rights organizations to have a social media strategy that is aligned with the overall goals or objectives. In **developing social media strategies**, it is important to include the following:<sup>116</sup>

- The objectives of the social media engagement which may be to educate, raise awareness, fundraise, gather support, gather information, etc.
- Content or information that will be shared
- Identify the social media tools to be used to meet the goals and reach the target audience.
- How should the messages be framed?
- Include measures for evaluation and process for follow-up.

In developing social media strategies, it is essential to keep in mind the advantages and disadvantages of social media as a platform for advocacy:

## General Social Media Tips

- These steps provide a blueprint for advocates seeking to use social media as a tool to meet organizational goals.
- Segment audiences. If a group can better identify and understand its targeted audiences, it will be better able to tailor its message to specific groups.
- Establish a message arc. A message arc is a narrative that accomplishes a goal with the intended audience. If a group's goal is to make a neutral or unaware audience care about its cause, an effective message arc would start with something short and emotional (e.g., a YouTube video) to capture the audience's interest, followed with contextual facts to provide a deeper understanding, and then a small action step followed by a larger one.
- Fine tune messaging and provide a call to action. Emotions and personal stories can be effective in grabbing attention. An effective strategy then follows with facts to establish the group's credibility and to help the audience understand the issue. Messaging should define the solution and provide an explicit call to action.
- Be conversational. Groups can use social media to engage with stakeholders, solicit feedback from audiences, and exchange ideas. Open-ended content can encourage conversation. Listen to and monitor the conversations that you initiate.
- "Brand" the organization consistently in all social media platforms.
- Understand supporter networks. Social media makes it easy for supporters to share a group's message with their social network and can help the group build a larger audience. Seek out your communities and become an active member by engaging in meaningful conversations.
- Promote the group's social media profile on the organization's website, through email lists, in email signature files, and at organizational events.
- Update sites regularly.
- Gather data to track which messages are effective.
- Use caution when sharing content. Once an organization publishes something on social media, it becomes part of the organization's "permanent record." For example, if a group wanted to increase the number of people making donations to support the group's work, it could consider a three-pronged strategy: (1) upload a YouTube video storytelling campaign accompanied by a donate button and call to action; (2) use Facebook and Twitter to link to the video and to promote a landing page for the group's fundraising website; and (3) post a photo series through Instagram, Pinterest, and Facebook with a request for funds.<sup>387</sup>

Source: *Human Rights Tools for a Changing World: A step-by-step guide to human rights fact-finding, documentation and advocacy*, *The Advocates for Human Rights*, January 2015, pp 141-142, citing GiveMN, "Using Social Media to Raise More Money," GiveMN—Using Social Media to Raise More Money.pdf.)

### Some Pros and Cons of Using Social Media for Advocacy

Advantages	Disadvantages
Free or inexpensive	Sources of information can be unreliable
Potential for global reach	Some target audiences have limited internet access
Reduces need for “insider” contacts	Engagement can lead to cyber-bullying
Builds and supports coalitions	Anonymity can unleash incendiary language
Responds quickly to breaking news	Many outreach efforts find only a limited audience
Facilitates two-way communication	Engagement can be superficial
Promotes engagement and activism	Information overload may cause audiences to tune out
Empowers human rights defenders	Publicity may facilitate harassment or persecution
Facilitates rich content, including photos, video, and personal narratives	Volume of information may make it difficult for users to identify quality sources
Gives advocates control of the message	Over-reliance on social media may result in neglect of in-person advocacy opportunities

Source: *Human Rights tools for a Changing World: A Step-by-step guide to human rights fact-finding, documentation and advocacy, the Advocates for Human Rights, January 2015, p. 136.*

## C. INTERNATIONAL ADVOCACY

Some major obstacles that Indigenous Peoples encounter in seeking justice and redress on human rights violations at the local level are: (a) weak implementation of human rights obligations; (b) lack of strong legal framework to protect human rights; (c) weak environment for the rule of law; (d) lack of access to justice; (e) impunity and reprisals against critics and advocates. When these situations exist, the environment for redress is constricted, thus Indigenous Peoples need to seek the intervention of international stakeholders to support national advocacy, gather more support and projection, and put pressure on the government.

At the international level, the UN, in enforcing international human rights laws, has various mechanisms to protect, monitor and advance human rights. Engagement in the UN system can be daunting and intimidating, but with good understanding of its systems and procedures, one can easily navigate through the myriad of available avenues for Indigenous Peoples’ rights advocacy. The UN system has two general categories in relation to human rights mechanism: (a) charter-based mechanisms; and (b) treaty-based mechanisms. Choosing the right mechanism to engage with depends on the issues being raised. Choosing more than one mechanism for a single advocacy is possible and is often more fruitful in getting international support.

There are also regional human rights bodies that engage in similar mandates of enforcing the protection of human rights, and monitoring compliance by governments. There are currently three regional human rights mechanisms existing in Europe, in the Americas, and in Africa. While the

ASEAN has its ASEAN Inter-governmental Commission on Human Rights (AICHR), its mandates do not include protection, prevention and enforcement mechanisms.

Questions for consideration in international advocacy:

- What are the UN bodies that Indigenous Peoples can access for advocacy?
- What regional bodies can Indigenous Peoples access for advocacy?
- How can Indigenous Peoples access these bodies?
- What are examples of cases addressed by UN and regional bodies?
- What are positive jurisprudence from UN and regional human rights bodies that can be used for national advocacy?

## 1. Advocacy in the United Nations

### A. UN Charter-based Mechanisms

The human rights mechanisms that derive their power or mandates from the UN Charter include the **Human Rights Council** and the **Special Procedures**. These mechanisms have the authority to monitor and review the compliance of member-States to international human rights law, regardless of whether the member-State has adopted or ratified a particular human rights treaty.

#### The Human Rights Council

The HRC is an inter-governmental body within the UN that meets regularly, through the UPR, to review the status of human rights in all 193 member-States, address human rights violations, and make recommendation for the improvement and fulfillment of human rights worldwide. The mechanisms under the HRC are unique in the sense that it encompasses all human rights violations regardless of status of ratification by the subject State.

##### i. The Universal Periodic Review

The UPR is a State-driven process, which involves a review of the human rights records of all UN Member States. It provides the opportunity for each State to declare what actions they have

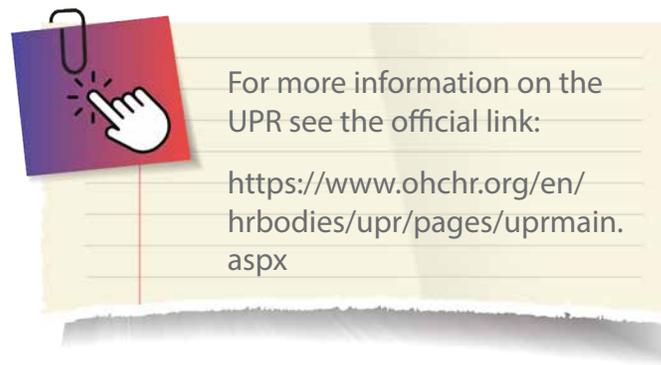
taken to improve the human rights situations in their countries and to fulfill their human rights obligations.<sup>117</sup> The human rights obligations addressed in the UPR are those set out in the (a) UN Charter; (b) Universal Declaration of Human Rights; (c) human rights treaties ratified by the State concerned; (d) voluntary pledges and commitments made by the State, e.g. national human rights policies and/or programmes implemented; (e) applicable international humanitarian law.<sup>118</sup> The UNDRIP also serves as a framework for evaluations and recommendations as to issues specific to the rights of Indigenous Peoples.

There are three UPR sessions in a year, with each session having around 14 countries for review. These reviews are conducted by the UPR Working Group consisting of 47 members of the HRC. If the country of any of the member of the working group is under review, the member will inhibit from the discussions or dialogues for the review of their State. Each State review is assisted by groups of three (3) States known as “troikas.” These “troikas” are selected through a drawing of lots, and they serve as rapporteurs during the review.

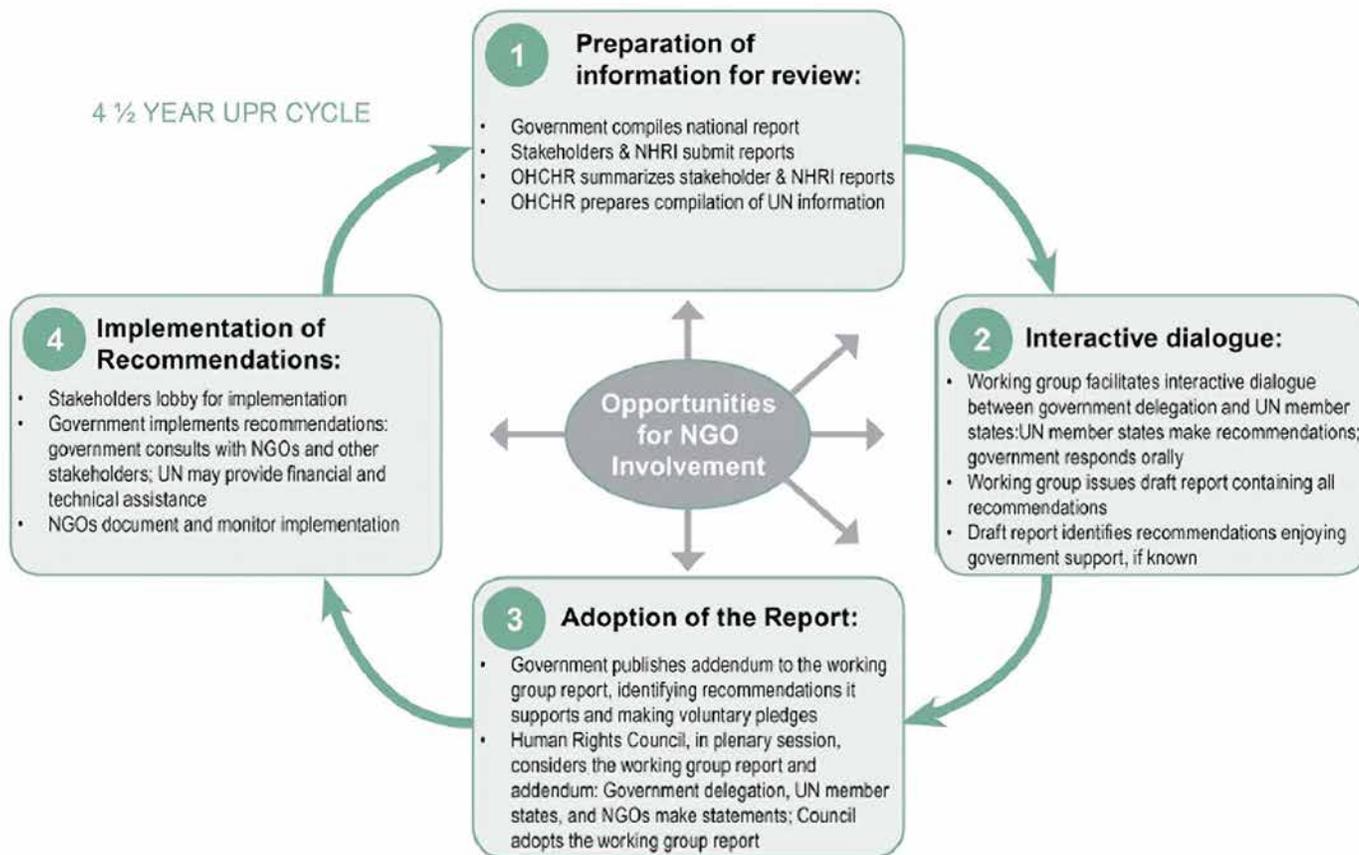
The UPR Working Group bases its reviews on 1) information provided by the State under review, which can take the form of a “national report;” 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including national human rights institutions and non-governmental organizations (NGOs).<sup>119</sup> Aside from submitting their own report, NGOs may also attend the UPR Working Group sessions and make statements or interventions during the regular session of the HRC when their States are being considered.

### **i.1. Indigenous Peoples, NGOs, and other stakeholders’ engagement**

Detailed UPR information and guidelines for relevant stakeholders including NGOs and Indigenous Peoples organizations are attached as **Annex A** to this manual. The guidelines include information on how NGOs, Indigenous Peoples, etc. can participate in the process, submit information, and the content or format of information to be submitted. Additionally, all information about the UPR may be accessed in the UNHRC website shown below, containing details of the countries to be reviewed, schedule for review, and documents related to specific countries, civil society engagements and accreditation, among others.



The following infograph is an easy-to-understand graphical representation of the UPR process, and shows the advocacy opportunities for NGOs, including Indigenous Peoples, which is basically on every process of the mechanism.



Source: Human Rights tools for a Changing World: A Step-by-step guide to human rights fact-finding, documentation and advocacy, the Advocates for Human Rights, January 2015, p. 201.

The Advocates for Human Rights<sup>120</sup> further expounded on the opportunities for NGOs, including Indigenous Peoples organizations, to conduct their advocacy or intervention in the UPR process by elaborating on what they can do prior, during and after the review:

UPR	What to do
Before the Review	Participate in consultations with the government of the country under review as it prepares its national report
	Research, write, and submit a stakeholder report on a human rights issue in the country under review
	Lobby UN member countries to educate their representatives on issues and concerns to be raised during the review. Outreach may target embassies, consulates, and missions to the United Nations in Geneva.
During the Review	Attend the interactive dialogue in person (if the group has ECOSOC status) or monitor it via webcast
	Hold a press conference or write a press release
	Host a side event
After the Review	Lobby the government to accept recommendations
	Address the Human Rights Council during the plenary session when it adopts the report of the working group (if the group has ECOSOC status)
	Release a written statement
	Report reprisals
Between Reviews	Advocate for legislation and other reforms to implement recommendations
	Engage in consultation with the government to participate in the implementation of recommendations
	Monitor the implementation of recommendations
	Contribute to UPR-Info's Mid-Term Implementation Assessment
	Document human rights conditions relating to accepted recommendations and any emerging human rights violations in preparation for the next UPR cycle

Over the years, the UPR has issued numerous recommendations in relation to Indigenous Peoples that cover a range of broad categories including:

- developing national strategies to address the civic, land and economic rights of Indigenous Peoples;
- implementing health, safety and education policy;
- combating racism, hate speech, and cultural and structural discrimination;
- ensuring full participation of Indigenous Peoples in decision-making processes that involve them;
- the right to consultation and free, prior and informed consent on legal, administrative, policy or development matters that affect them.<sup>121</sup>

Other recommendations focused on the guarantee of rights to ancestral territories; reducing social conflict in the extractive sector by improving consultation; preventing violence against Indigenous Peoples and the human trafficking of Indigenous women and children; building public awareness about ethnic and racial equality for Indigenous Peoples; increasing intercultural services such as interpreters and bilingual educators; and assistance and protection of human rights defenders.<sup>122</sup>

## ii. Complaint Procedure before the HRC

The Complaint Procedure of the Human Rights Council is a confidential, victim-oriented mechanism where individuals, groups including Indigenous Peoples, non-government organizations who claim to be victims of human rights violations or have direct and reliable knowledge of such violations, can submit communications to the Working Group on Communications for assessment. If the communication is found admissible and meritorious, it is then forwarded to the Working Group on Situations, which will determine if there is a pattern of gross violations of human and fundamental freedoms. The specific country subject of the communication will be allowed to reply to the allegations. A report on communications received under this mechanism is submitted and presented for full action by the HRC.

For communications to be admissible, they must, at the minimum, contain information on the following:

- a. The author(s) of the communication or the alleged victim(s)
- b. The State concerned
- c. Facts of the complaint and nature of the alleged violation (s)
- d. Exhaustion of domestic remedies
- e. Submission of communication to other human rights bodies
- f. Request for confidentiality
- g. Checklist of supporting documents

A copy of the Complaint Procedure Form is attached to this guide as **Annex B**, and additional basic information in the submission of information in relation to a human rights violation is attached as **Annex C**.

### What are the criteria for a communication to be accepted for examination?

A communication related to a violation of human rights and fundamental freedoms is admissible, provided that:

- It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;
- It gives a factual description of the alleged violations, including the rights which are alleged to be violated;
- Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;

- It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;
- It is not exclusively based on reports disseminated by mass media;
- It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;
- Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.
- National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

Source: Human Rights Council Complaint Procedures, <https://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>.

### iii. Special Procedures under the HRC

The Special Procedures of the HRC are composed of independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. Like the UPR, Special Procedures can investigate on human rights issues relating to civil, cultural, economic, political, and social rights and concerning all member-States regardless of the status of ratification of human rights treaties.

Special Procedures are either an individual or a working group. The individuals or independent experts are called Special Rapporteurs, while working groups are usually composed of five (5) members from each of the UN regional groupings: Africa, Asia, Latin America and the Caribbean, Eastern Europe, and the Western group. Special procedures may refer to a thematic focus, for example the Special Rapporteur on the Rights of Indigenous Peoples and the Working Group on Issue of Human Rights and Transnational Corporations and Other Business Enterprises, or country-specific for instance the Special Rapporteur on the Situation of Human Rights in Myanmar. There are currently 56 Special Procedures, 44 of which are thematic and 12 are country mandates. The Special Procedures are appointed by the HRC and they serve in their personal capacities. To preserve the independence and impartiality of their office, they are not remunerated and they work independently of any State. They have a term of 3 years (1 term) and are limited to a maximum of 6 years (2 terms).

The Office of the United Nations High Commissioner for Human Rights (OHCHR) supports the works of Special Procedures for instance, by providing the staff or secretariat. The Special Procedures “undertake **country visits**; act on individual cases of alleged violations and concerns of a broader, structural nature by sending **communications** to States; conduct thematic studies and convene **expert consultations**, contributing to the development of international human rights standards; engage in **advocacy** and **raise public awareness**; and provide advice for technical cooperation. Special Procedures **report annually** to the Human Rights Council and the majority of the mandates also report to the General Assembly.”<sup>123</sup>

Special Procedures with Thematic Mandates		
Special Rapporteurs		
Field of Cultural Rights	Right to Development	Rights of persons with disabilities
Right to education	Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment	Extrajudicial, summary or arbitrary executions
Right to food	Promotion and protection of the right to freedom of opinion and expression	Rights to freedom of peaceful assembly and of association
Implication for human rights of the environmentally sound management and disposal of hazardous substances and wastes	Right of everyone to the enjoyment of the highest attainable standard of physical and mental health	Adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
Situation of human rights defenders	Independence of judges and lawyers	Rights of Indigenous Peoples
Human rights of internally displaced persons	Elimination of discrimination against persons affected by leprosy and their family members	Human rights of migrants
Minority issues	Extreme poverty and human rights	Right to privacy
Contemporary forms of racism, racial discrimination, xenophobia and related intolerance	Freedom of religion or belief	Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material
Contemporary forms of slavery, including its causes and consequences	Promotion and protection of human rights and fundamental freedoms while countering terrorism	Torture and other cruel, inhuman or degrading treatment or punishment
Trafficking in persons, especially women and children	Promotion of truth, justice, reparation and guarantees of non-recurrence	Negative impact of unilateral coercive measures on the enjoyment of human rights
Violence against women, its causes and consequences	Human rights to safe drinking water and sanitation	

<b>Independent Experts</b>		
Enjoyment of Human Rights by persons with albinism	Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights	Promotion of a democratic and equitable international order
Human rights and international solidarity	Enjoyment of all human rights by older persons	Protection against violence and discrimination based on sexual orientation and gender identity
<b>Working Groups</b>		
People of African Descent	Arbitrary Detention	Issue of Human Rights and Transnational Corporations and other business enterprises
Enforced or involuntary disappearances	Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	Discrimination against women and girls
<b>Special Procedures with Country Mandates</b>		
Independent Experts on the situation of human rights in	Special Rapporteur on the situation of human rights in	
Central African Republic	Belarus	
Mali	Cambodia	
Somalia	The Democratic People's Republic of Korea	
Sudan	Eritrea	
	Islamic Republic of Iran	
	Myanmar	
	Palestinian territories occupied since 1967	
	Syrian Arab Republic*	
	* Will start once the mandate of the Commission on Inquiry ends	

The directory of the current mandate holders, as of July 2020, is attached as Annex D. All communications may be sent to the email addresses indicated in the document, regardless of who sits as mandate holder.

Mandate-holders or Special Procedures carry out country visits to assess the situation of human rights at the national level at the request of a mandate-holder, then, the Government will send an invitation for a fact-finding mission. Some countries have standing invitations, which means that they are, in principle, prepared to receive a visit from any thematic mandate-holder. However, an official invitation is still needed before a mandate-holder actually conducts a country mission.

During country missions, the experts assess the general human rights situation in a given country, as well as the specific institutional, legal, judicial, administrative and de facto situation under their

respective mandates. They are required to meet with national and local authorities, members of the judiciary and parliamentarians; members of the national human rights institution, if applicable; non-governmental organizations, civil society organizations and victims of human rights violations; the UN and other inter-governmental agencies; and the press when giving a press-conference at the end of the mission. At the end of the mission, the experts issue their end-of-mission Statements and present their findings, conclusions and recommendations to the Human Rights Council.<sup>124</sup>

### **Urgent Appeals, Communications and Submitting information to Special Procedures**

Mandate holders can intervene directly with Governments, inter-governmental organizations, businesses, military or security companies, on allegations of violations of human rights that come within their mandates by means of letters which include **urgent appeals** and other **communications**. These letters may relate to past human rights violations, on-going violations or impending violations. They may also deal with issues relating to bills, legislations, policies or practices that do not comply with international human rights law or standards. On-going violations are usually the subjects of urgent appeals, while allegation letters are used for the other circumstances. The concerns may refer to individual cases, trends of human rights violations, or cases affecting groups or communities.

The letters usually state the facts or the allegations of human rights violations, the relevant international human rights law or standard, concerns and questions of the mandate holder, request for information, appeal for action, among others. This process may be triggered by information submitted by NGOs, civil society organizations, and other stakeholders. These communications are confidential until the States, or other entities respond to the letter, or the 60 day period lapses. The information on the victims is mentioned in these letters by default, unless confidentiality is requested, usually because of security concerns.

This process applies to almost all Special Procedures. However, there are slight variations in the methods of work of the Working Group on Arbitrary Detentions and the Working Group on Enforced or Involuntary Disappearances.

The purposes of the communications of the Special Procedures are to:<sup>125</sup>

- draw the attention of Governments and others on alleged human rights violations;
- ask that the violations be prevented, stopped, investigated, or that remedial action is taken;
- report to the Human Rights Council on communications sent and replies received, therefore raising public awareness on individual and group cases, as well as legislative and policies developments they have addressed in a given period.

Any individual, group, civil society organization, inter-governmental entity or national human rights institution can submit information to the Special Procedures. This may be done online, or by sending it to the official email addresses of the mandate holder concerned (see /), or for urgent alerts, it may also be sent to [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org). It may also be sent by post to OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland. In submitting to the Special Procedures, the following information must be included:<sup>126</sup>

1. **Identification of the alleged victim(s).**
2. **Identification of the alleged perpetrators of the violation (if known), including** substantiated information on all the actors involved, including non-state actors if relevant.
3. **Identification of the person(s) or organization(s) submitting the communication, if different from the victim (this information will be kept confidential).**
4. **Date, place and detailed description of the circumstances of the incident(s) or violation.** The information submitted can refer to violations that are said to have already occurred, that are ongoing, or about to occur.
5. **It is extremely important that alleged victims and/or their families or representatives indicate in their submissions whether they DO or DO NOT consent that:**
  - names of the victims be disclosed in the communications to Governments, intergovernmental organisations, businesses, military or security companies
  - names of the victims appear in a public report to the Human Rights Council; other details pertaining to the specific alleged violation may be required depending on the mandate(s) to which the submission is addressed or relevant.

Communications that contain abusive language or that are obviously politically motivated are not considered. Communications should not be based solely on media reports.

Submissions are assessed to ensure compliance with the Code of Conduct<sup>127</sup> of Special Procedures, verify credibility of source and reliability of information. The Code of Conduct enumerates these criteria:<sup>128</sup>

- the communication should not be manifestly unfounded or politically motivated;
- the communication should contain a factual description of the alleged violations of human rights;
- the language in the communication should not be abusive;
- the communication should be submitted on the basis of credible and detailed information;
- the communication should not be exclusively based on reports disseminated by mass media.

### **Special Rapporteur on the Rights of Indigenous Peoples**

In 2001, the HRC (Commission on Human Rights at the time), created the mandate of the Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP) as part of the Special Procedures.

Pursuant to HRC Resolution 42/20,<sup>129</sup> the mandates of the UNSRRIP are:

- a. To examine ways and means of overcoming existing obstacles to the full and effective protection of Indigenous Peoples' rights, in conformity with their mandate, and to identify, exchange and promote best practices;

## Special Procedures: General Guidelines for Submitting an Allegation Letter

- Describe clearly and concisely the facts of the incident:
  - Identify of the victims
  - Identify of the alleged perpetrators
  - Identify of the person or organization submitting the allegation letter (this information will be kept confidential)
  - Date and place of incident
  - Detailed description of the circumstances of the incident in which the alleged violation occurred
  - Other documents and details (medical information, places of detention, etc.)
- Identify the exact UN Special Procedure most closely related to the case and follow any specific requirements it has for allegation letters.
- Submit the allegation letter in a primary UN language (English, Spanish, or French) and if at all possible in English.
- Clearly establish that the incident was a violation of human rights.
- For allegation letters relating to legislation, submit a copy of the text of the (draft) law, preferably translated into English, French, or Spanish. Provide information why the legal provisions or the application of the law is allegedly incompatible with international human rights standards.
- Make a clear argument to why right have been violated.
- DO NOT leave anything out. The person submitting the allegation letter has far more information about the situation that the United Nations does.
- DO NOT use any abusive language or language that is obviously politically motivated.
- DO NOT base the allegation letter solely on media reports.  
For more information visit: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

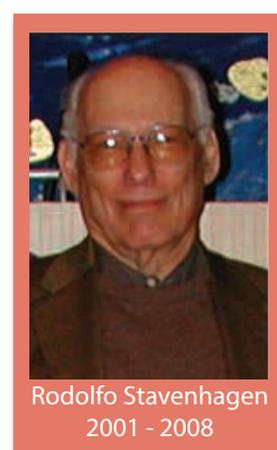
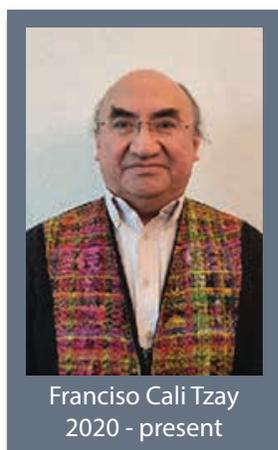
Source: *Human Rights tools for a Changing World: A Step-by-step guide to human rights fact-finding, documentation and advocacy, the Advocates for Human Rights, January 2015, p. 217.*

- b. To gather, request, receive and exchange information and communications from all relevant sources, including Governments, Indigenous Peoples and their communities and organisations, on alleged violations of Indigenous Peoples' rights;
- c. To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of Indigenous Peoples' rights;

- d. To work in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular with the Expert Mechanism on the Rights of Indigenous Peoples, relevant UN bodies, the treaty bodies, and regional human rights organisations.
- e. To enhance engagement with and to participate in the annual sessions of the Permanent Forum on Indigenous Issues and of the Expert Mechanism on the Rights of Indigenous Peoples to ensure complementarity between their work;
- f. To develop a regular cooperative dialogue with all relevant actors, including Governments, relevant UN bodies, specialized agencies and programmes, and with Indigenous Peoples, national human rights institutions, NGOs, and other regional or sub-regional international institutions, including on possibilities for technical cooperation at the request of Governments;
- g. To promote the UNDRIP and international instruments relevant to the advancement of Indigenous Peoples' rights, where appropriate

In carrying out these different activities, the UNSRRIP is tasked to pay “special attention to the situation of indigenous children and women;” to consider “relevant recommendations of the world conferences and treaty bodies on matters regarding his/her mandate;” and to “submit a report on the implementation of his/her mandate to the Human Rights Council and the General Assembly in accordance with its annual programme of work.”

Since 2001, there have already been four UNSRRIP:



Part of the UNSRRIP mandate is to conduct thematic studies that concern Indigenous Peoples worldwide, and to provide recommendations for positive practical action and reform. Some thematic studies of the UNSRRIP include, among others:

- Attacks and criminalisation of indigenous human rights defenders (A/HRC/39/17)
- Access to Justice (A/HRC/42/37)

- The implementation of domestic laws and international standards to protect indigenous rights (E/CN.4/2006/78)
- International norms concerning Indigenous Peoples (E/CN.4/2002/97)
- Autonomy and self-governance (A/74/149)
- Indigenous women and girls (A/HRC/30/41)
- The situation of human rights and fundamental freedoms of indigenous people (A/HRC/15/37)
- Extractive industries operating within or near indigenous territories (A/HRC/18/35)

The activities that are usually undertaken by the UNSRRIP as part of the mandate to promote good practices and conduct dialogues and consultations are:<sup>130</sup>

- Providing assistance and encouragement for constitutional and legislative reform initiatives to harmonize such initiatives with relevant international standards;
- Monitoring the implementation of recommendations made by the Special Rapporteur and other mechanisms, including through follow-up country visits;
- Encouraging steps toward improving relations between Indigenous Peoples, States, and other stakeholders through agreements and other constructive arrangements;
- Participating in seminars and conferences that address Indigenous Peoples' human rights, attended by Governments, NGOs, Indigenous Peoples and their leaders, and other interested parties; and
- Promoting behavior by business enterprises that is respectful of indigenous rights

Indigenous Peoples, NGOs and civil society organizations can engage with the UNSRRIP in various ways, such as:

- Lobbying their governments to invite the UNSRRIP to conduct an official visit in their country
- Submitting communications concerning Indigenous Peoples' rights violations, and situations
- Submitting information to contribute to thematic reports
- Organizing dialogues, consultations and other interactions with Indigenous Peoples

The UNSRRIP also regularly calls for inputs of certain thematic issues. The UNSRRIP's official website contains clear information on how to engage, how to submit information, list of communications sent to governments, annual and thematic reports, details of



contact information, country visits, among others.

Each mandate holder is assigned a similar website that provides similar information on their work and how to engage, documents, reports and data in relation to the mandate.



The official website is of the UN-SRRIP:

<https://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>

### Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

EMRIP is a specialized body consisting of seven (7) independent experts from the different global regions. It was established by the HRC in 2007 to conduct studies and provide advice to the HRC “to provide a better understanding of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and to propose concrete actions that States, Indigenous Peoples, civil society, international organizations, national human rights institutions and others can take in order to further its implementation.”<sup>131</sup> More specifically, the EMRIP’s mandate includes:<sup>132</sup>

- Upon request, assisting Member States and/or Indigenous Peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of Indigenous Peoples;
- Providing Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms;
- Upon the request of Member States, Indigenous Peoples and/or the private sector, engaging and assisting them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration;
- Identifying, disseminating and promoting good practices and lessons learned, and the efforts to achieve the ends of the Declaration, including through reports to the Human Rights Council;
- Expansion of the membership from five to seven experts, in order to reflect the seven indigenous socio-cultural regions.

The studies conducted by EMRIP are aimed towards achieving the goals of the UNDRIP, and to advance the promotion and protection of Indigenous Peoples’ rights by (a)



You may contact the EMRIP through:

**Secretariat of the Expert Mechanism on the Rights of Indigenous Peoples,**  
OHCHR-UNOG, 8-14 Avenue de la Paix,  
1211 Geneve 10, Switzerland

Email: [expertmechanism@ohchr.org](mailto:expertmechanism@ohchr.org)

clarifying the implications of key principles, such as self-determination and FPIC; (b) examining good practices and challenges in a broad array of areas pertaining to Indigenous Peoples' rights; and (c) suggesting measures that States and others can adopt at the level of laws, policies and programmes.<sup>133</sup>

EMRIP presents opportunities for advocacy and lobbying for Indigenous Peoples, which include: (a) participation in the studies undertaken by the EMRIP through submission of information; (b) lobbying their governments to invite the EMRIP for a country visit; (c) attending EMRIP sessions and presenting interventions at the official meetings. The sessions of the EMRIP usually runs for one-week at the UN in Geneva, although intercessional meetings are also held; (d) conducting meetings with members of the EMRIP; and (e) organizing side-events during EMRIP sessions, to discuss and share information on specific cases, trends or issues of Indigenous Peoples. The studies and recommendation of EMRIP are also sources of advocacy at the national level, to push governments to implement the recommendations.



To see a complete list of the thematic studies and reports of the EMRIP, check this link:

<https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/AnnualReports.aspx>

### **UN Permanent Forum on Indigenous Peoples Issues (UNPFII)**

The UNPFII was established<sup>134</sup> on July 28, 2000 by the UN Economic and Social Council as a high-level advisory body to the Council on Indigenous Peoples in relation to economic and social development, culture, environment, education, health and human rights. More specifically, the UNPFII

- provides expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through ECOSOC;
- raises awareness and promotes the integration and coordination of activities related to indigenous issues within the UN system;
- prepares and disseminates information on indigenous issues;
- promotes respect for and full application of the provisions of the UNDRIP and follow up the effectiveness of this Declaration (Art. 42 UNDRIP).



United Nations Permanent Forum  
on Indigenous Issues

In addition, the UNPFII works on cross-cutting topics that are significant to Indigenous Peoples: gender and indigenous women; children and youth; Indigenous Peoples and the 2030 Agenda; Data and Indicators.

The UNPFII is composed of sixteen (16) independent experts. Eight (8) of the experts are nominated by government and the other eight (8) are nominated directly by indigenous organizations in their regions. The representatives of Indigenous Peoples are appointed by the President of ECOSOC,

and they come from seven (7) socio-cultural regions: Africa; Asia; Central and South America and the Caribbean; the Arctic; Central and Eastern Europe and Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific.

UNPFII explores policy issues and develops recommendations with the active participation of Indigenous Peoples and organizations as well as States. It provides a venue for Indigenous Peoples to report rights abuses, and reviews implementation of the UNDRIP. As a platform for advocacy, Indigenous Peoples can (a) contribute to the studies conducted by members of the UNPFII; (b) submit information that speaks on the themes of the annual sessions and on all matters relating to the mandate and cross-cutting issues; (c) organize meetings with State representatives, UNPFII members, and other international organizations, especially during the annual sessions; (d) present interventions during the annual sessions; (e) organize side events on significant topics that concern Indigenous Peoples.



For more information about the UNPFII, check the website at:

<https://www.un.org/development/desa/indigenouspeoples/about-us/permanent-forum-on-indigenous-issues.html>

## **B. UN Treaty-based Mechanisms**

There are presently nine (9) core international human rights treaties with ten (10) monitoring bodies that have entered into force encompassing all recognized human rights. Member States that have ratified these treaties are referred to as State parties. State parties assume the legal obligation to implement the provisions of treaties that they ratify, and hold themselves accountable to any violations.

Monitoring bodies are composed of independent human rights experts, with the mandate to monitor State compliance or implementation of the treaty and its optional protocols where applicable. Although State parties elect the members of the treaty monitoring bodies, they are expected to perform with independence and autonomy to ensure impartiality and objectivity in the performance of their mandate.

All State parties are required to submit periodic reports to the concerned monitoring body on their compliance to their obligations in the treaty. The monitoring bodies likewise receive information from NGOs and CSOs and other relevant sources. Treaties with Optional Protocols allow individuals and other victims of human rights violations to submit complaints to the monitoring body. For the Optional Protocol to apply, the State Party must ratify it separately from the treaty. From the reports received from States, NGOs, CSOs and relevant



Status of ratification of the human rights treaties on a country-by-country basis can be accessed at:

<http://indicators.ohchr.org>

stakeholders, treaty monitoring bodies examine all information and address its concerns and recommendations to the State party in the form of concluding observations.

**All treaty bodies (except SPT):**

- Receive and consider reports submitted by State parties
- Issue concluding observations/recommendations to assist States in implementing their obligations
- Develop general comments/recommendations interpreting provisions of their respective treaties both substantively and procedurally

**Some treaty bodies may be mandated to perform additional functions, such as to:**

- Consider individual communications
- Consider inter-State complaints
- Conduct or initiate inquiries
- Conduct investigations through country visits

*What do treaty bodies do? Source: Simple Guide to UN Treaty Bodies, ISHR*

List of international human rights treaties, optional protocols and the corresponding monitoring body:

INTERNATIONAL HUMAN RIGHTS CONVENTIONS		Monitoring Body
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination (CERD)
ICCPR	International Covenant on Civil and Political Rights	Human Rights Committee (HRC)
ICESCR	International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (CESCR)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of all forms of discrimination against Women (CEDAW)

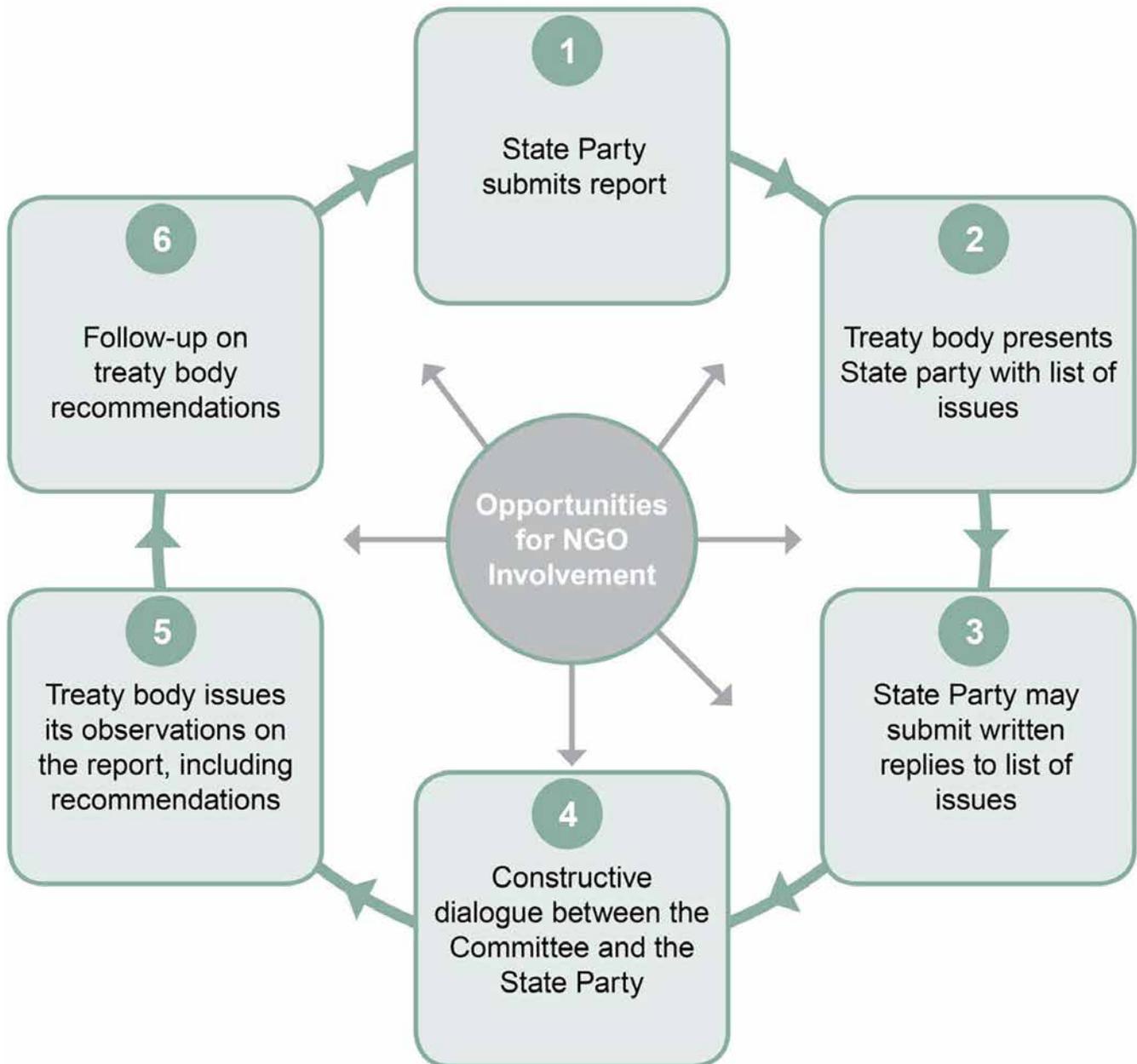
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
CRC	Convention on the Rights of the Child	Committee on the Rights of the Child (CRC)
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on the Protection of the rights of all Migrant Workers and Members of their families (CMW)
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	Committee on the Protection of all Persons from Enforced Disappearance (CED)
CRPD	Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities (CRPD)
Optional Protocols		Monitoring Body
ICESCR - OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	CESCR
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	HRC
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	HRC
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	CEDAW
OP-CRC-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC
OP-CRC-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	CRC
OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	CRC
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	CRPD

### Overview of the Reporting Process

State parties are required to submit an **initial report**, usually within one or two years from its ratification of a treaty, and thereafter, **periodic reports**, on different intervals depending on the requirement of the treaty monitoring body concerned. CED is the only body that has no provision regarding the submission of periodic reports. The State reports comprise of two parts – (a) the

**common core document** that covers general information about the reporting State including its general framework for the protection and promotion of human rights; and (b) **treaty-specific documents** refer to information about the implementation of the provisions of the treaty.

### Treaty Monitoring Bodies Reporting Cycle



Source: *Human Rights Tools for a Changing World: A step-by-step guide to human rights fact-finding, documentation and advocacy*, The Advocates for Human Rights, January 2015, p. 226.

### Opportunities for engagement by Indigenous Peoples, NGOs, CSOs in the treaty monitoring body cycles:

Reporting stage	What to do
Before the State Party Submits Its Report	Participate in consultations with the State Party as it prepares its report.
	Raise public awareness about the treaty and the reporting process.
	Lobby the State Party to meet reporting deadlines.
Before the Treaty Body Meets to Adopt Its List of Issues	Prepare a List of Issues report identifying key human rights issues that warrant additional attention during the reporting process.
	Write to the Treaty Body to express interest in participating in the Pre-Session Working Group (if permitted).
During the Meeting of the Pre-Session Working Group	Make an oral intervention during the Pre-Session Working Group (if permitted).
Before the Treaty Body's Examination of the State Party	Research, write, and submit a shadow report on a human rights issue in the State Party.
During the Treaty Body's Examination of the State Party	Attend the session in person (if the group has ECOSOC status) or via webcast.
	Make an oral intervention during the examination.
	Participate in informal briefings with committee members.
	Circulate "one pagers" in person or via email highlighting key concerns identified in the shadow report.
After the Treaty Body Publishes Its Concluding Observations	Conduct awareness-raising activities.
	Lobby for legislation and other reforms to implement the treaty body's recommendations, and engage in consultation with the government to participate in the implementation of recommendations.
	Monitor and document the implementation of the treaty body's recommendations.
	Submit interim shadow report assessing implementation of priority recommendations.
	Inform treaty body immediately if the State Party engages in reprisals for participation in the review process.

This table shows different opportunities for Indigenous Peoples and civil society organizations to engage at various stages of the reporting cycle. Achieving objectives of engagements will depend on a well-organized and carefully planned advocacy campaign that involves all stakeholders and maximizes all avenues for advocacy.

### C. The International Labour Organization

The International Labour Organization (ILO)<sup>135</sup> is a standard-setting tripartite UN agency devoted to promoting social justice and internationally recognized human and labor rights, including the improvement of living and working conditions of all working people without discrimination as to race, gender or social status. The ILO has complaint and representation procedures that are possible avenues for advocacy and engagement by Indigenous Peoples.

These redress procedures are essential to Indigenous Peoples' advocacy because of ILO Convention 169 (Indigenous and Tribal Peoples convention), a binding instrument that applies to Indigenous and tribal peoples and calls for the protection and realization of their rights to self-determination; social, cultural, religious and spiritual values; consultation in relation to legislative and administrative measures that affect them; customs and customary laws; ownership and possession over lands that they traditionally occupy; to the natural resources in their lands, among others. ILO Convention however, has few ratifications by only 23 countries, 15 of which are States in Latin and Central America, namely Argentina, Brazil, Colombia, Bolivia, Chile, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Venezuela. In all these countries, Indigenous Peoples are present.

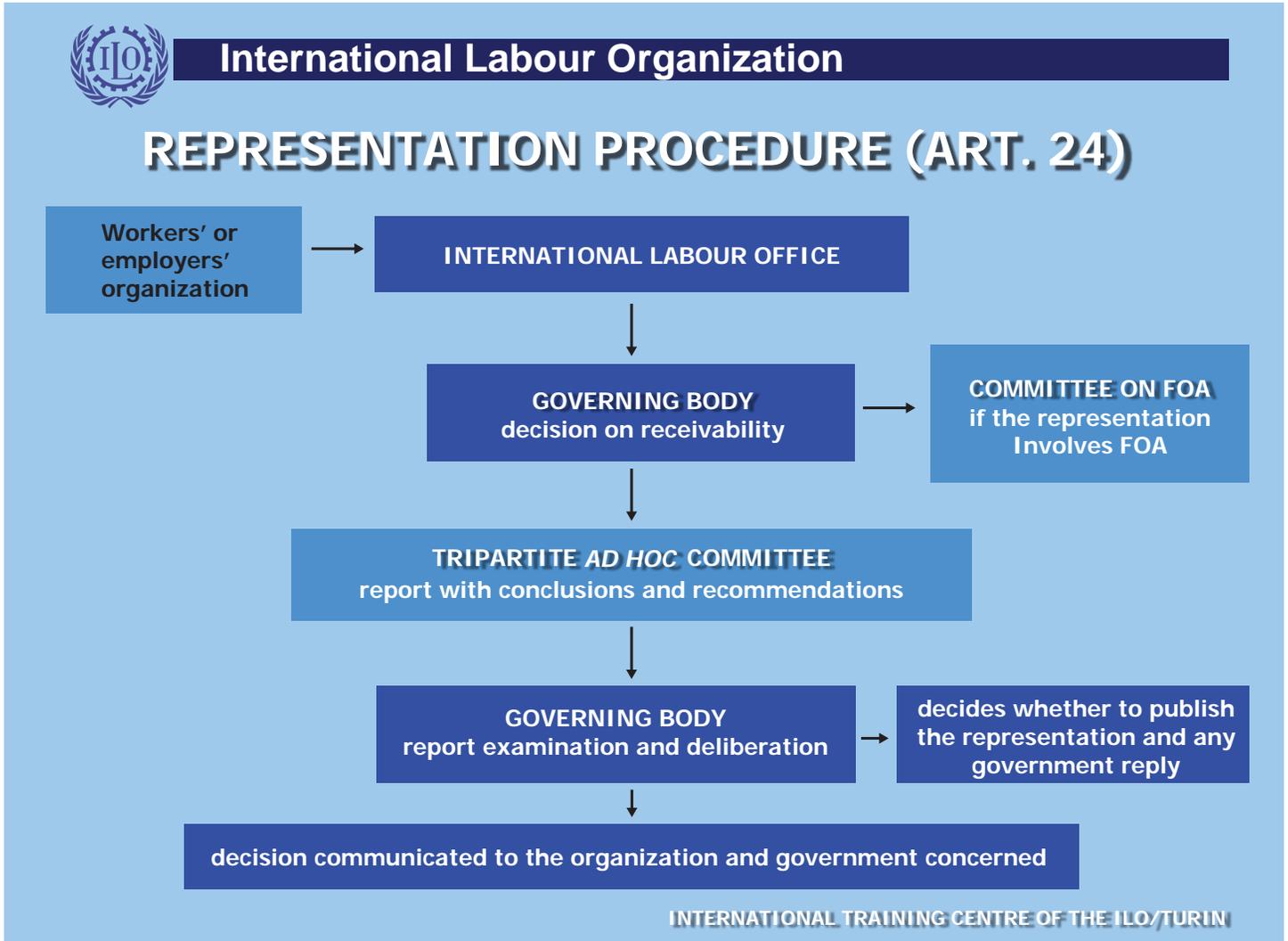
There are three procedures of redress mechanisms under the ILO – the complaint procedure, the representation procedure, and the special procedure for freedom of association. The **representation procedure** under Article 24 of the ILO constitution allows employers' and workers' unions to submit information to the ILO Governing Body in relation to the State's failure to observe or comply with its obligations under an ILO convention. On the other hand, the complaints procedure is covered by Articles 26-34 of the ILO Constitution and it allows for submission of complaints against any Member State by another Member State of the same convention, a delegate to the International Labour Conference, or the ILO Governing Body. Additionally, there is a special procedure for freedom of association.

The following table shows the subject matter covered by each procedure that is allowed to submit information or complaint, and which ILO body conducts the investigation:

Kind of Complaint	Subject	Ratification Necessary?	Who Begins the Procedure?	Who Investigates?
Article 24 Representations	Any ILO Convention	Yes	Any workers' or employers' organization	ILO Governing Body
Article 26 Complaints	Any ILO Convention	Yes	State has ratified same Convention Delegate to the International Labor Conference ILO Governing Body	Commission of Inquiry
Special procedure for freedom of association	Freedom of association	No	Workers' or employers' organization concerned ILO bodies, state concerned, ECOSOC	Committee on Freedom of Association (since 1951) Fact-Finding and Conciliation Commission

Source: SWEPTON, Lee: *Human Rights Complaint Procedures of the International Labour Organization*, In: Hannum, Hurst (Ed): *Guide to International Human Rights Practice*. Ardsley, NY: Transnational Publishers, 1999, p. 89.

Under Article 24, the process of submitting information and consideration or investigation under the representation procedure is captured in the following figure. It has to be emphasized that only workers' and employers' organizations are allowed to submit information:



**Excerpt from the Report of the Committee set up to examine the representation alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Union of Engineers of the Federal District (SENGE/DF).**

Note: These recommendations were adopted by the Governing Body under the representation procedure of the ILO.

#### **IV. Recommendations**

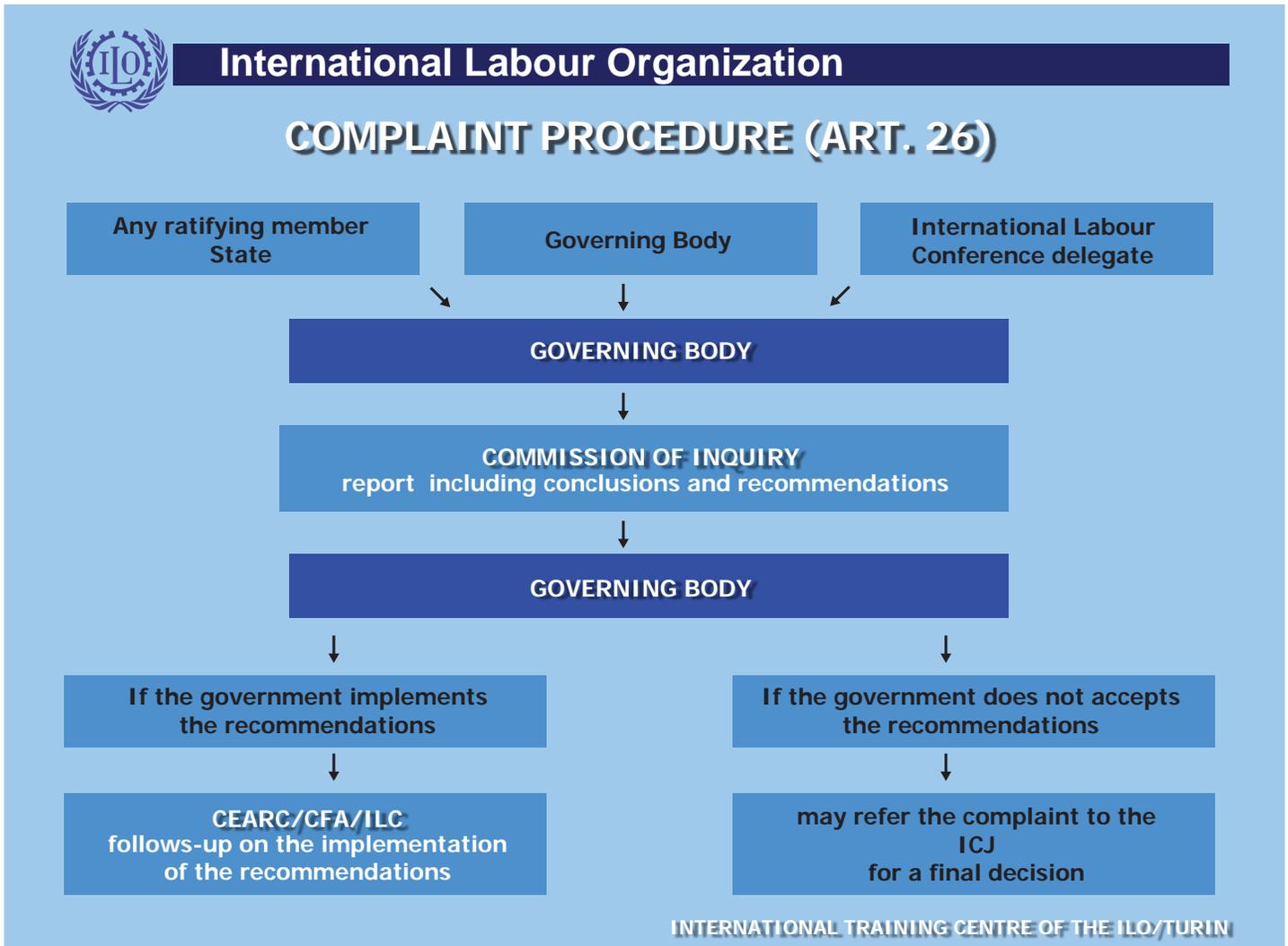
The Committee's recommendations

**62.** The Committee recommends to the Governing Body that it approve this Report and, in the light of the conclusions contained in paragraphs 35-61, that it:

- a. request the Government to adopt the measures needed to complement the consultation process concerning the impact of timber concessions envisaged in the Act concerning the administration of public forests on the Indigenous Peoples likely to be affected, xxxx
- b. request the Government to adopt in particular the relevant regulatory and practical measures to implement the consultation process laid down in Article 15 (2) of the Convention, including the procedural requirements stipulated in Article 6, before licenses are granted for the timber exploration and/or exploitation envisaged in the Act concerning the administration of public forests;
- c. request the Government to ensure that the consultation process required under Article 15 of the Convention is implemented xxxxxx
- d. invite the Government, under the terms of Article 7(1) of the Convention, to guarantee the participation of the Indigenous Peoples in the formulation, implementation and evaluation of plans and programmes related to the logging activities referred to xxx
- e. request the Government, in accordance with Article 7(3) of the Convention, to ensure that studies are carried out, in cooperation with the peoples concerned, with a view to assessing the social, spiritual and environmental impact on the peoples concerning logging activities envisaged in the Act;
- f. request the Government to ensure that the Indigenous Peoples affected by logging activities participate, whenever possible, in the benefits of such activities and receive fair compensation for any loss or damage they may sustain as a result of such activities;
- g. request the Government to ensure that logging activities do not affect the rights of ownership and possession laid down in Article 14 of the Convention;
- h. request the Government to adopt special measures to safeguard the persons, institutions, property, labour, cultures and environment of the peoples affected by logging activities;

xxxx

Meanwhile, the complaints procedure only allows ratifying State, Governing Body or delegate to the International Labour Conference to submit complaints. The procedure for consideration and investigation is laid down in the figure below:



The special procedure for complaints regarding freedom of association is most commonly used. Any complaint about violations of freedom of association is submitted to the Committee on Freedom of Association (CFA). The complaint must be filed by employers' and workers' organizations against any member State, regardless of the status of ratification of relevant conventions by the respondent State.

Recommendations in *Case No 3100 (India) - Complaint date: 12-AUG-14; Report No 377, March 2016*

(Complaint filed under the special procedure for complaints regarding freedom of association of the ILO)

**381.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- a. The Committee requests the Government to submit detailed information on the outcome of the legal proceedings instituted against leaders of the WBCPA, Mr Sanjay Poria, Mr Arijit Mitra and Mr Chandranath Bid and to transmit a copy of the judgments delivered.
- b. The Committee requests the Government to conduct an investigation into the allegations of use of force by the police, in response to demonstrations of civic volunteers in the Malda and Bankura districts and to keep it informed of the outcome. It further requests the Government to provide detailed information on the development and outcome of legal proceedings instituted against 13 protestors from Baishnabnagar named in paragraph 11 of the present report, and to transmit a copy of the judgments delivered.
- c. The Committee requests the Government to look into the allegations of the WBCPA relating to the death of civic volunteer, Saphikul Sheikh, and to keep it informed in this regard.
- d. The Committee requests the Government to facilitate the engagement of the Government of West Bengal and WBCPA in constructive social dialogue and collective bargaining, with a view to resolving all outstanding issues.

#### ***D. Advocacy before regional human rights bodies***

Structures and systems to support and protect human rights have been established in a few geographical regions - Europe, Africa and the Americas. No similar mechanisms exist in Asia, Pacific or the Middle East. These mechanisms are supported by regional agreements or conventions, and are created to monitor the compliance of their Member States with their human rights obligations. The mechanisms are broadly similar to that of the UN although on the regional level, regional courts, not just commissions, are also established.

#### **1. The Inter-American System**

The Organization of American States (OAS) is the longest regional organization composed of 35 Member-States and constitutes the political, juridical and social government forum in the Americas. It has granted permanent observer status to 69 States and the European Union (EU).<sup>136</sup> The Inter-American System for the protection of human rights is a regional human rights system within the OAS, composed of two principal entities: the Inter-American Commission on Human Rights (IACHR) and Inter-American Court of Human Rights (IACtHR). Together, these two entities are

responsible for the interpretation and enforcement of human rights across the 35 Member States of OAS. The IACHR has its headquarters in Washington, D.C., USA and the IACtHR is based in San Jose, Costa Rica.

Member countries of the Organization of American States			
Antigua and Barbuda	Argentina	Barbados	Belize
Bolivia	Brazil	Canada	Chile
Colombia	Costa Rica	Cuba	Dominica (Commonwealth of)
Dominican Republic	Ecuador	El Salvador	Grenada
Guatemala	Guyana	Haiti	Honduras
Jamaica	Mexico	Nicaragua	Panama
Paraguay	Peru	Saint Kitts and Nevis	Saint Lucia
Saint Vincent and the Grenadines	Suriname	The Bahamas (Commonwealth of)	Trinidad and Tobago
United States of America	Uruguay	Venezuela (Bolivarian Republic of)	

Both the IACHR and IACtHR have the authority to receive and decide on individual complaints alleging violations of human rights, and may issue emergency protective measures when an individual or the subject of a complaint is facing imminent risk of irreparable harm. The authorities of these two bodies are anchored on the Charter of the OAS and several regional human rights instruments:

Organization of American States' instruments for the protection and promotion of human rights
Charter of the Organization of American States (1948) and its protocols
The American Declaration of the Rights and Duties of Man (adopted 1948)
The American Convention on Human Rights ("Pact of San José, Costa Rica") (adopted 1969, entered into force 1978)
The Inter-American Convention to Prevent and Punish Torture (adopted 1985, entered into force 1987)
The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (adopted 1988, entered into force 1999)
The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") (adopted 1994, entered into force 1995)
The Inter-American Convention on Forced Disappearance of Persons (adopted 1994, entered into force 1996)
The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (adopted 1999, entered into force 2001)
The Inter-American Democratic Charter (adopted 2001)
The Declaration of Principles on Freedom of Expression (adopted 2000)
Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (adopted 2008)

## Organs of the Inter-American System for the Protection of Human Rights

Inter-American Commission on HR	Inter-American Court of HR
<ul style="list-style-type: none"> <li>• 7 members (Commissioners)</li> <li>• elected by the General Assembly of the OAS</li> <li>• independent experts</li> <li>• 4 year term plus one reelection</li> <li>• functions:               <ul style="list-style-type: none"> <li>- to promote respect for and defense of human rights</li> <li>- to prepare reports regarding the human rights situations in OAS member States (in loco visits)</li> <li>- to act on individual petitions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 7 members (Judges)</li> <li>• elected by States Parties to the American Convention</li> <li>• independent jurists</li> <li>• 6 year term plus one reelection</li> <li>• functions:               <ul style="list-style-type: none"> <li>- contentious: to resolve individual cases</li> <li>- advisory: to interpret the American Convention and other human rights instruments</li> </ul> </li> </ul>



Centro por la Justicia y el Derecho Internacional | Center for Justice and International Law | Centro pela Justiça e o Direito Internacional | Pemontón Kowantok Wacupe Yuwanin Pataset

There are additional bodies within the Inter-American System focused on particular rights or groups. These include the Inter-American Commission of Women (CIM), the Working Group on the Protocol of San Salvador, and the Follow-up Mechanism to the Belém do Pará Convention (MESECVI).

### 1.1. The Inter-American Commission on Human Rights

The OAS Charter established the IACHR as one of its organs in the promotion and protection of human rights, and to provide advice to the OAS. The work of the IACHR rests on three pillars: (a) the individual petition system; (b) monitoring of human rights situation in OAS member States; (c) priority thematic areas. Indigenous Peoples in the member-States are given special attention by the



IACHR, to address the historical discrimination against them. The IACHR has developed a body of jurisprudence protecting the rights of Indigenous Peoples and recognizing their collective rights and to collective existence.

### Methods of Work of the IACHR

To achieve its function to promote the observance and defense of human rights, the IACHR works in various methods: (1) conducting country visits; (2) carrying out thematic activities and initiatives; (3) preparing reports on the human rights situation in a certain country and particular theme; (4) adopting precautionary measures or requesting provisional measures before the IACtHR, and (5) process and analyzing individual petitions to determine international responsibility of States for human rights violations and issuing recommendations accordingly.

#### a. Individual petitions and cases

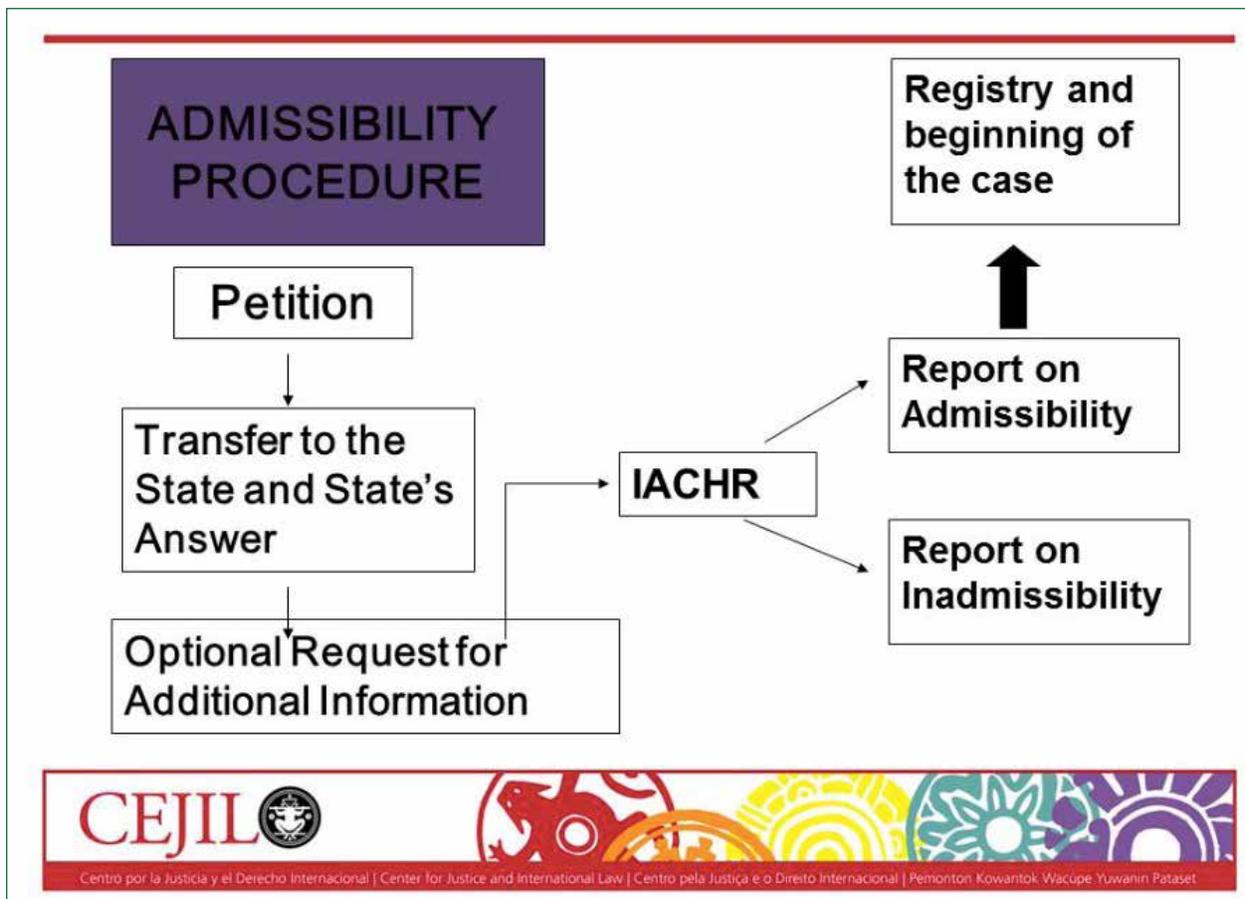


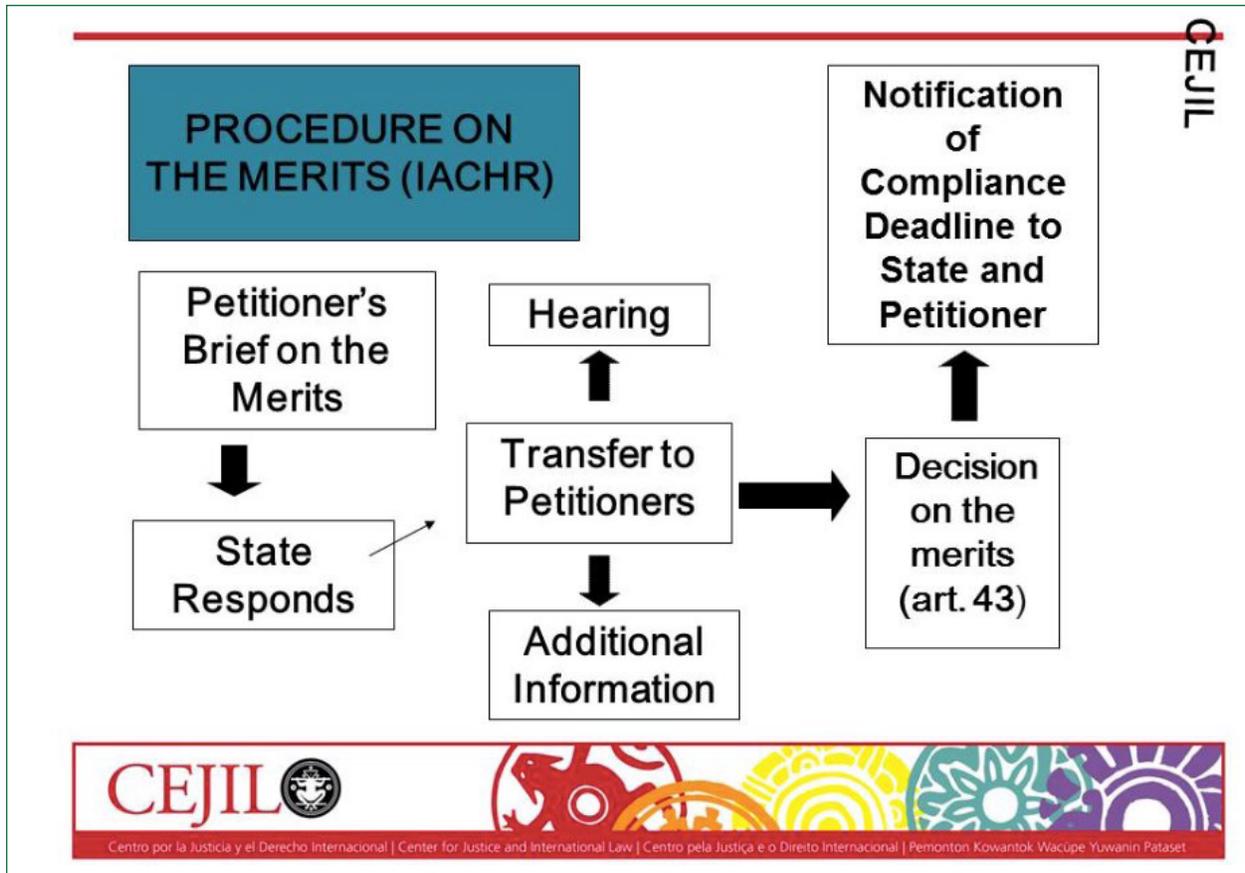
Uwa Nation case against Colombia (2016) before the IACHR. (Photo source: [colectivodeabogados.org](http://colectivodeabogados.org))

Any person, group of persons, or organization, on its own or in representation of another, may file a petition alleging a human rights violation against one or more Member States of the OAS. The Petition must clearly describe the facts supporting the allegation of human rights violation against a member-State. These human rights are those recognized in the American Declaration of the Rights and Duties of Man (for allegations against non-Convention States) or the American Convention or another Inter-American human rights treaty (for allegations against State Parties to the American Convention). The Petitioner must also show that domestic remedies were exhausted before the petition was brought to the IACHR.

When a petition is received, the IACHR sends relevant parts of it to the government concerned and requests for information. Once the government responds, the petitioner may submit its comment to the response. The IACHR then determines the admissibility of the petition and once it is deemed admissible, it proceeds with the consideration of the case on the merits and potential for conducting an investigation. It may request either or both parties for more information and usually conducts hearings for the presentation of witnesses and evidence, and legal arguments. The IACHR then promulgates its decision on the merits. It may also facilitate instead, a friendly settlement between the parties.

Each petition undergoes an admissibility process where the IACHR determines the sufficiency of the petition in both form and substance, before it is forwarded further for the determination of the case on its merits.





In cases where the State does not comply with the recommendations of the IACHR, the IACHR may (a) publish the case; and/or (b) refer the case to the IACtHR.

The identities of victims are not generally **confidential** because these have to be communicated to the government although special considerations may be made by the AICHR. In some cases, the IACHR may withhold or change the identity of the victim/s in documents that are made public, to protect their privacy and security. On one hand, petitioners, especially representatives, may request that their identity be kept confidential, subject to the consideration of the AICHR.

The necessary information to be included in the petition are:<sup>137</sup>

- the personal information of the alleged victim(s) and that of their next of kin;
- the personal information on the petitioner(s), such as complete name, phone number, mailing address, and email;
- a complete, clear, and detailed description of the facts alleged that includes how, when, and where they occurred, as well as the State considered responsible;
- an indication of the State authorities considered responsible;
- the rights considered violated, if possible;

- the judicial bodies or authorities in the State to which one has turned to remedy the alleged violations;
- the response of the State authorities, especially of the courts of justice;
- if possible, uncertified and legible copies of the principal complaints and motions filed in pursuit of a remedy, and of the domestic judicial decisions and other annexes considered relevant, such as witness statements; and
- an indication as to whether the petition has been submitted to any other international organization competent to resolve cases.

Since the IACHR does not return documents that have been submitted in the context of a petition, the original copies of documents/evidence should not be sent. Photocopies of documents may be submitted and these do not require certification, notarization or authentication as long as the document is legible.

Petitions maybe submitted by post, through email, uploaded online or through fax. There is no need to submit the petition by more than one method.



#### Where and how to submit petitions?

**Email:** [cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)

**Electronic form:** [www.cidh.org](http://www.cidh.org). If you wish to send your petition via the electronic form, you have the option of drafting your petition in a separate document and uploading it to the Commission's website.

**Fax:** +1(202) 458-3992 or 6215

**Mail:**

Inter-American Commission on Human Rights  
1889 F Street, N.W.  
Washington, D.



Suggested easy-reference to the IACHR petition and case system:

Informational Brochure on the Petition and Case system of the Inter-American Commission on Human Rights. It contains an overview of human rights in the inter-American system, simple guide for submitting a petition, serious and urgent situations before the IACHR:

<http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>

### Inter-American Commission on Human Rights: Comparison on the Rules and Procedures for Individual Petitions<sup>138</sup>

	State has not ratified the American Convention	State has ratified the American convention
Basis for human rights	American Declaration of rights and Duties of Man, especially Article I-IV, XVIII, XXV-XXVI	American Convention on Human Rights, other Inter-American human rights treaties that the State has ratified
Relevant language in the Commission Statute	Article 20	Article 19
Relevant Rules of Procedure for the Inter-American Commission	Articles 38-44, 47-49, 51-52	Articles 26-49
Who may lodge a petition?	No specific rule	A person, group of people, or non-governmental organization legally recognized in an OAS State American Convention Art. 44
May a petitioner request to be anonymous?	No specific rule	Petitioners may request that their identity be withheld from the State, but the petition must provide reasons. Rules of Procedure Art. 28.
Is it necessary to exhaust domestic remedies?	Yes. The commission must verify whether domestic legal procedures and remedies have been duly applied and exhausted. Commission Statute Art. 20 (c)	Not always. The exhaustion of requirements does not apply if domestic law does not provide due process for the protection of the human rights at issue, or if the petitioner has been denied access to remedies or has been prevented from exhausting remedies, or if there has been unwarranted delay in rendering final judgment under available domestic remedies, Rules of Procedure Art. 31 (2).

When must the petition be filed?	No specific rule	No later than six months after the petitioner receives notice of the final judgment relevant to exhaustion of domestic remedies. If one of the exhaustion exceptions applies, then the petition must be filed within a reasonable time, considering the circumstances of the case. Rules of Procedure Art. 32; American Convention Art. 46.
Can the commission refer the case to the Inter-American Court of Human Rights?	No specific rule	Yes. If the commission determines that there has been a violation, the petitioner may request that the commission refer the case to the Inter-American Court. If the commission determines that the State has not complied with the commission’s recommendations, it may refer the case to the Inter-American Court. Rules of Procedure Art. 44(3), Art. 45.

**b. Serious and urgent situations**

In serious and urgent situations, the IACHR may, on its own initiative or upon motion by a party, request a State to adopt precautionary measures to prevent an imminent irreparable harm to persons, groups or organizations. This is established under Article 25 of the Rules of Procedure of the IACHR, which states that:

Article 25. Precautionary Measures

1. In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case.
2. In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any pending petition or case.
3. The measures referred to in paragraphs 1 and 2 above may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.
4. The Commission shall consider the gravity and urgency of the situation, its context and the imminence of the harm in question when deciding whether to request that a State adopt precautionary measures or not. The Commission shall also take into account:

- a. if the situation of risk has been brought to the attention of the pertinent authorities, or the reasons why it might not have been possible to do so;
  - b. the individual identification of the potential beneficiaries of the precautionary measures or the identification of the group to which they belong; and
  - c. the express consent of the potential beneficiaries whenever the request is filed before the Commission by a third party unless the absence of consent is duly justified.
5. Prior to the adoption of precautionary measures, the Commission shall request relevant information to the State concerned, unless the urgency of the situation warrants the immediate granting of the measures.
  6. The Commission shall periodically evaluate whether it is pertinent to maintain any precautionary measures granted.
  7. At any time, the State may file a duly grounded petition that the Commission withdraw its request for the adoption of precautionary measures. Prior to the adoption of a decision on the State's petition, the Commission shall request observations from the beneficiaries or their representatives. The submission of such a petition shall not suspend the enforcement of the precautionary measures granted.
  8. The Commission may request relevant information from the interested parties on any matter related to the granting, observance, and maintenance of precautionary measures. Material non-compliance by the beneficiaries or their representatives with such a request may be considered a ground for the Commission to withdraw a request that the State adopt precautionary measures.  
  
With regard to precautionary measures of a collective nature, the Commission may establish other appropriate mechanisms of periodic follow-up and review.
  9. The granting of such measures and their adoption by the State shall not constitute a prejudgment on the violation of the rights protected by the American Convention on Human Rights or other applicable instruments.

Precautionary measures may be availed of even without filing a petition although in most cases, these are coupled with a regular petition which may be submitted by mail, email or fax to the same contact details for the submission (see above). It follows basically the same procedure and rules on petitions.



Factsheets on how to request precautionary measures before the IACHR may be accessed in this link, in all official languages (English, Spanish, Portuguese, French)

<http://www.oas.org/en/iachr/decisions/request-precautionary.asp>

Requests for precautionary measures must contain the following basic information:<sup>139</sup>

<b>PERSONAL INFORMATION</b>
<ul style="list-style-type: none"> <li>• The applicant’s contact information, such as full name, telephone, mailing address, fax and email, and the indication if the applicant seeks to keep his or her identity confidential.</li> <li>• The determination of the person or group of persons proposed as the beneficiary, and the contact information, if possible. If it is not possible to name all the persons individually, the data provided must be sufficient for the State to be able to provide them protection.</li> <li>• If the person is deprived of liberty, please indicate where he or she is detained.</li> </ul>
<b>COMPLAINTS TO STATE AUTHORITIES</b>
<ul style="list-style-type: none"> <li>• An explanation of whether the alleged facts have been reported to the authorities or whether the State has been asked to provide protection, and a description of the response, if any; or an explanation of why it has not been possible to put such protection in place.</li> <li>• An indication as to whether the person or group or persons proposed as beneficiaries already has any measures of domestic protection . If so, provide an explanation of how effective those measures have been.</li> </ul>
<b>MEASURES REQUESTED</b>
<ul style="list-style-type: none"> <li>• A description of the measures of protection or other measures that have been requested.</li> </ul>
<b>FACTS ALLEGED</b>
<ul style="list-style-type: none"> <li>• A detailed and chronological description of the facts that shows the existence of a serious and urgent situation and irreparable harm.</li> <li>• The current situation of the persons proposed as beneficiaries and their degree of risk.</li> <li>• If possible, send legible and uncertified copies of the documents needed to understand the situation of the person or group of persons proposed as the beneficiary. These may be copies of complaints presented to the authorities; medical certificates in situations involving health; and any other relevant legal motions that have been presented. The reasons should be provided if it is not possible to send these documents. Photocopies of documents do not require any formality, i.e., it is not necessary that they be certified, notarized or legally authenticated. One need not send several copies of the same document. If the request and its annexes are sent by mail, it is preferable that the documentation not be bound or laminated in any way.</li> </ul>
<b>INFORMATION AS TO WHETHER IT IS RELATED TO A PETITION OR CASE BEFORE THE COMMISSION</b>
<ul style="list-style-type: none"> <li>• An indication if the person has already filed a petition or has a case pending before the Commission, and if so, the date of submission of the petition and the reference number assigned to the petition or case.</li> </ul>

## Precautionary Measures

On July 17, 2020, the IACHR issued Resolution 35/2020, Precautionary Measure No. 563-20 requesting Brazil to protect the Yanomami and Ye'kwana Indigenous Peoples from the ongoing heightened risk posed by COVID-19. In particular, the IACHR asked Brazil to protect the Yanomami and Ye'kwana Indigenous Peoples' right to health, life and integrity, by taking measures to prevent the further spread of COVID-19.

Reference: <http://www.oas.org/es/cidh/decisiones/pdf/2020/35-20MC563-20-BR-PT.pdf>, last accessed on September 21, 2020

In 2018, the IACHR issued precautionary measures to Indigenous Peoples at risk of extinction in Colombia, through Resolution No 53/2018, Precautionary Measure No. 395-18, directing the government of Colombia to adopt culturally appropriate measures to guarantee the lives of the Siona Indigenous Peoples to ensure their safety as they continue to live their culture and continue with their traditional subsistence activities in their territories. It also ordered the protection of Siona Indigenous leaders from any form of aggression and the removal of explosive materials in their territory and the prevention of recruitment of young people to armed groups.

The Resolution was issued in light of the situation of grave risk and urgency faced by the Siona people who were confronted with threats to their lives, livelihood and culture because of the presence of armed groups in their territory. Earlier in 2009, the Colombian Constitutional Court declared 36 peoples, among them the Siona Indigenous Peoples, at risk of physical and cultural extermination due to the civil war, and thus issued several judgments to provide measures of reparation and restitution of territorial rights.

For more information on the case: [https://www.cejil.org/sites/default/files/res\\_53\\_2018\\_mc\\_395-18\\_0.pdf](https://www.cejil.org/sites/default/files/res_53_2018_mc_395-18_0.pdf), last accessed on September 21, 2020.

Rapporteurship on the Rights of the Child	1998
Rapporteurship on Human Rights Defenders	2001
Rapporteurship on the Rights of Persons Deprived of Liberty	2004
Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination	2005
Rapporteurship on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons	2011
Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights	2012
Unit on Memory, Truth, and Justice	2017

Each member of the AICHR is assigned thematic and country rapporteurships which were established to address and devote focus on groups who are more at risk and vulnerable to human rights violations. The aim of the thematic rapporteurship is “to strengthen, promote, and systematize the Inter-American Commission’s own work” on each of the theme or issue. Other issues regarded as priority but still not established under rapporteurship are organized as “units.” The Rapporteur on Indigenous Peoples was the first established rapporteurship in 1990.

Indigenous Peoples, groups and organizations can engage with these rapporteurships by responding to questionnaires on particular topics, participating in country visits and hearings, and submitting written information after hearings. Groups can also encourage rapporteurships to speak out about particular human rights violations or to examine particular topics in hearings, questionnaires, and country visits.

Thematic Rapporteurs/Thematic Units	Year Created
Rapporteurship on the Rights of Indigenous Peoples	1990
Rapporteurship on the Rights of Women	1994
Rapporteurship on the Rights of Migrants	1996
Special Rapporteurship for Freedom of Expression	1997
Unit on the Rights of Older Persons	2017
Unit on the Rights of Persons with Disabilities	2017

The Rapporteur on Indigenous Peoples has the mandate to carry out the following activities,<sup>140</sup> and Indigenous Peoples may find these as opportunities for engagements and advocacy:

- To promote the development of the inter-American human rights system as it applies to the protection of Indigenous Peoples, and in particular, to advance and consolidate the system’s jurisprudence on the rights of Indigenous Peoples. Likewise, to promote and facilitate Indigenous Peoples’ access to the inter-American system.
- To participate in the analysis of individual petitions and requests for precautionary measures on alleged violations of the rights of Indigenous Peoples or of their members.
- To support onsite visits to OAS member countries in order to delve more deeply into the observation of the general situation or to investigate particular situations involving Indigenous Peoples, as well as to participate in the preparation of the respective reports on such visits.
- To prepare thematic reports on subjects pertaining to the human rights of the Indigenous Peoples of the Americas—reports that contain recommendations to the OAS Member States on the adoption of measures that help to promote and guarantee Indigenous Peoples’ human rights.
- To carry out and participate in various types of conferences, seminars, and meetings with representatives of governments, academia, civil society, and Indigenous Peoples, for the

purpose of raising awareness and analyzing the issues that are part of its mandate.

- To collaborate on a permanent basis with the OAS Permanent Council's Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples and its chairmanship.

### Panama, December 2010

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On December 14-19, 2010, Rapporteur Dinah Shelton carried out a fact-gathering visit to Panama in connection with the case of the Kuna of Madungandí and Embera of Bayano indigenous communities, and the case of the Ngöbe communities located in the area where the Chan 75 Dam is being built on the Changuinola River. During the visit, the Rapporteur met with government officials and traveled to the various communities involved in these cases. Attorneys Federico Guzmán and Lilly Ching also participated in the visit.



Click on the photos to enlarge them

Source: Website of the OAS, <http://www.oas.org/en/iachr/indigenous/activities/countries.asp>, last accessed on Sept. 21, 2020.

Thematic reports focusing on Indigenous Peoples and human rights defenders have been made and published.





#### d. Country Visits

Country visits and working visits may be conducted by the IACHR as a body, or through the Rapporteurs, to conduct an investigation on the human rights issues of a Member State. The country or working visit may be requested by the Member-State or done upon the initiative of the IACHR or the Rapporteur. Civil society organizations, Indigenous Peoples and other groups may lobby their governments or the IACHR or Rapporteurs to conduct a country or working visit. During these visits, the IACHR or the Rapporteur meets with a broad range of stakeholders including from the government, civil society organizations, and Indigenous Peoples who may submit complaints and information. At the end of a visit, press statements, preliminary observations, concluding observations and recommendations are issued. A country report detailing a more comprehensive observation and recommendations is released resulting from the country visit.

There have been several country and working visits conducted focusing on the situation of Indigenous Peoples. On November 24-26, 2014, the Rapporteur on Indigenous Peoples made a country visit to Chile to “collect information on the general situation of human rights in the country, as well as closely examine the human rights situation of Indigenous Peoples” especially in the context of development and investment projects, and concessions for the extraction of natural resources. A similar visit was undertaken in Guatemala on August 21-30, 2013 that focused on the discrimination and exclusion of Indigenous Peoples, the situation of their right to their lands, territories and natural resources and to their FPIC. At the conclusion of the visit, Rapporteur Dinah Shelton concluded that Indigenous Peoples in Guatemala suffer from racism and discrimination even if the government instituted several programs supposedly to address these. Additionally, Shelton said that Indigenous Peoples suffer from disproportionate rates of extreme poverty and

child malnutrition, while free prior and informed consultations are absent in the issuance of licenses for mining and hydroelectric projects.

### Mexico - August 25-31, 2005

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At the invitation of the Mexican government and at the request of several representatives of Mexican civil society, the Inter-American Commission visited Mexico on August 25-31, 2005. The delegation was composed of Commissioner José Zalaquett, Rapporteur on the Rights of Indigenous Peoples and Rapporteur for Mexico, as well as staff of the Executive Secretariat of the Commission.



Click on the photos to enlarge them  
[More photos »](#)

In Mexico City, the IACHR held meetings with federal authorities, with the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, and with representatives of Mexican civil society. Meetings were also held on pending cases and petitions, and a meeting was held with a number of Mexican organizations that work to safeguard the rights of indigenous peoples.

On this occasion, the IACHR made its first official visit to the state of Oaxaca. It held meetings with representatives of Oaxacan civil society organizations and with technical staff of a United Nations project to implement recommendations stemming from a UN diagnosis of the human rights situation in Mexico, as well as with authorities, academics, and the State Human Rights Commission. Working meetings were also held in Oaxaca on precautionary measures and cases pending before the IACHR, as well as a meeting with the Secretary General of the Oaxaca state government. The visit gave the Commission valuable information about the problems that have given rise to agrarian, community, and political conflicts in the state of Oaxaca.

Photo Source: OAS Website, <http://www.oas.org/en/iachr/indigenous/activities/countries.asp>, last accessed on Sept. 21, 2020.



You may access country reports online, through the OAS/IACHR website:

<http://www.oas.org/en/iachr/reports/country.asp>

### e. Hearings

The Rules of Procedure of the IACHR, Articles 66-68, provide for the conduct of public hearings on issues of human rights either at the national or regional level, as a means to monitor human rights situation and gather information from a broad range of stakeholders. These hearings are independent of petitions and cases, do not require exhaustion of domestic remedies, and are usually conducted during sessions of the IACHR.

Any person, groups or organizations may request for the conduct of a hearing through a written communication to the Executive Secretariat, at least 50 days before the commencement of the session of the AICHR. The written request must contain the following information:

- Purpose of the public hearing;
- Summary of the information to be submitted or discussed;
- Approximate time needed for the hearing; and
- Identity of the participants

The AICHR will assess the request and inform the concerned party or parties of the date, place and time of the hearing, which will be conducted either publicly or privately, depending on the discretion of the AICHR.

Some of the hearings conducted in relation to Indigenous Peoples include:

Country Concerned	Topic	Date of Hearing
Nicaragua	Miskitu Indigenous Community of Tasbapounie; Afro-descendant Community of Monkey Point; Rama Indigenous Peoples, Black Creole Community of Bleuf, Nicaragua	March 5, 2020
Guatemala	Indigenous Peoples' rights to food and water in Guatemala	November 12, 2019
Colombia	Violence and situation of human rights of Indigenous Peoples in Cauca state	November 12, 2019
Mexico	Human rights violations against Indigenous Peoples in Mexico	November 11, 2019
Brazil	Environmental Protection in the Amazon and the Rights of Indigenous Peoples in Brazil (ex officio)	September 27, 2019
Regional	Climate change and economic, social, cultural and environmental rights of women, children, Indigenous Peoples and rural communities, climate change and economic, social, cultural and environment rights	September 25, 2019
Canada	Missing and murdered indigenous women and girls in Canada (ex officio)	September 24, 2019



You can see the list of hearings conducted in relation to Indigenous Peoples, including additional information, in the OAS/IACHR website:

<http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=17>.

### e. Victims Legal Assistance Fund

The Legal Assistance Fund was set up to support complainants/petitioners with the indispensable expenses required by gathering and sending documentary evidence, bringing and presenting witnesses during hearings, and other related expenses for the processing of the petition.

Basic information in relation to the fund:<sup>141</sup>

#### **Who can apply to the Legal Assistance Fund?**

The petitioners and alleged victims of complaints filed before the IACHR that are in the merits stage. This means that:

- the IACHR has adopted an admissibility report; or
- the IACHR has informed the parties of its decision to join the issue of admissibility to the merits.

#### **What kind of expenses can be covered by the Legal Assistance Fund?**

- gathering and sending documentary evidence;
- expenses derived from the appearance of the alleged victim, witnesses and experts in hearings held by the Commission; and
- other expenses considered pertinent by the Commission for the processing of the case.

#### **What are the eligibility requirements for the legal assistance benefit?**

- The applicant shall demonstrate that they lack sufficient means to cover all or some of the expenses.
- Applicant shall specify the expenses to which the resources of the Fund will be applied, as well as its relation to the case.

#### **How to prove lack of sufficient means?**

- By an affidavit and other pertinent methods of proof such as a payroll or tax return.

#### **How to apply to the Legal Assistance Fund?**

- By a written communication in the context of the case pending before the IACHR.

#### **What to do if there are additional questions?**

- It is suggested to read the complete Rules on this same page. If doubts on the functioning of the Fund persist, please send an electronic e-mail to Paulina Corominas - [pcorominas@oas.org](mailto:pcorominas@oas.org)

## 1.2 Inter-American Court of Human Rights (IACtHR)

The IACtHR is an autonomous institution composed of seven (7) judges who are nationals from any of the OAS Member States. It has the mandate to interpret and apply the American Convention on Human Rights. Its authority applies only in relation to the States that have recognized its contentious jurisdiction. Only the IACHR and the State-parties to the American Convention can submit cases to the IACtHR. There are 20 countries at this time that are under the IACtHR's jurisdiction:

Argentina	Colombia	Guatemala	Panama
Barbados	Costa Rica	Haiti	Paraguay
Bolivia	Dominican Republic	Honduras	Peru
Brazil	Ecuador	Mexico	Suriname
Chile	El Salvador	Nicaragua	Uruguay

Even if individuals and civil society organizations cannot submit cases before the IACtHR, they may still submit information and have meaningful engagement in the process. After a case is submitted, the alleged victims may submit their own brief, evidence and motions, and participate in the hearings. The victims may be called to testify, present oral arguments or submit electronic statements, and cross-examine other witnesses. Individuals and civil society organization may also submit *amicus curiae*<sup>142</sup> to the IACtHR in the course of the proceedings.

The IACtHR has three functions: (a) contentious, (b) the power to issue provisional measures, and (c) the advisory function. Its contentious function allows it to determine whether a State has incurred an international responsibility for human rights violation related to the American Convention and other human rights treaties in the Inter-American system, and supervises the implementations of decisions. Provisional measures consist of actions taken by the IACtHR in serious and urgent cases where irreparable harm to people is imminent. Its advisory function allows the court to respond to requests for advice or questions by OAS Member States or organs of the OAS regarding: a) the compatibility of internal norms with the Convention, and b) the interpretation of the Convention or other treaties concerning the protection of human rights in the American States.<sup>143</sup>



The IACtHR has built a body of jurisprudence relating to Indigenous Peoples' rights. You may find details of these cases and decisions here:

[http://www.oas.org/en/iachr/indigenous/decisions/ia\\_court\\_hr.asp](http://www.oas.org/en/iachr/indigenous/decisions/ia_court_hr.asp)



## **Plan de Sánchez Massacr v. Guatemala, Inter-American Court of Human Rights, April 29, 2004**

### Antecedent Facts:

From 1962 to 1996, a domestic armed conflict raged in Guatemala that resulted to great human, material, institutional and moral costs. On March 23, 1982, a Military Junta took power after a successful military coup d'état. The Military Junta adopted and implemented a military campaign called "Victory 82" where the counterinsurgency policy was characterized by extreme military actions geared toward destruction of groups and communities, forced geographic displacements of indigenous communities who were perceived as potential supporters of guerilla forces. There were about 626 violent massacres that were reported to the Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification) to have occurred during the civil war. One of these massacres was the Plan de Sánchez massacre.

Plan de Sánchez is one of the villages located in the municipality of Rabinal and inhabited by indigenous Mayan people of the achí linguistic community. In July 1982, a military plane dropped two bombs in two different areas near inhabited areas. On July 15, 1982, the military set up camp in the village and then three days later, on July 18, 1982, the massacre happened. It was a market day, a busy day for Plan de Sánchez and with other villages that have to pass through Plan de Sánchez to go to the municipal market center. Two mortars were fired on the community in the morning. In the afternoon, between 2:00 – 3:00 p.m., a contingent of around 60 people composed of army, military commissioners, judiciales (court officials), civilian informers and patrol members, arrived at the village. They were wearing military uniforms and carrying assault rifles. Some of them were stationed at the entry/exit to the village to prevent people from going in and out of it. Girls and young women were brought to one place where they were tortured, raped and murdered. Boys and girls were separated and beaten to death. Other members of the village were brought to another house where two grenades were later thrown inside while the military were indiscriminately firing at the place. The house and the corpses were later put on fire. The military and their contingent only left the village. It was reported that around 268 men, women, boys, girls and children were killed and burned beyond recognition.

The following day, military men returned and ordered those who survived the massacre to dig mass graves and bury all the bodies within one hour, otherwise the community will be bombed again.

## The Case and Decision of the Inter-American Commission on Human Rights (IACHR)

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On October 25, 1996 the Centro para la Acción Legal en Derechos Humanos filed a petition before the IACHR on behalf of the victims and families of victims of the Plan de Sánchez massacre.

After the proceedings before the IACHR and considering the positions of all parties and the information submitted to it, the IACHR adopted a Report on February 28, 2002 – Report No. 25/02, the operative part of which recommended that the State of Guatemala:

1. Conduct a special, rigorous, impartial, and effective investigation with the aim of trying and punishing the direct perpetrators and masterminds of the Plan de Sánchez massacre.
2. Make reparations both individually and at the community level for the consequences of the violation of the rights listed. Measures of reparation must include identification of all the victims of the Plan de Sánchez massacre, as well as adequate compensation for their next of kin and for survivors of the massacre.
3. To adopt such measures as may be necessary to avoid similar facts occurring in the future, in accordance with the duty of prevention and to ensure the fundamental rights set forth in the American Convention.

The IACHR also decided to file an application before the Inter-American Court of Human Rights.

## The Case Decision of the Inter-American Court of Human Rights (Court)

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On July 31, 2002, the IACHR filed an application before the Court against the State of Guatemala, asking for the Court's judgment to find the State of Guatemala responsible for violations of the rights to humane treatment, to judicial protection, to fair trial, to equal treatment, to freedom of conscience and of religion, and to private property, and violation of its obligation to respect human rights.

In the application, the IACHR argued that there was denial of justice and other acts of intimidation and discrimination against the survivors and families of the victims of the massacre. IACHR said that there was a situation of impunity regarding the incident since the State has not conducted any serious and effective investigation, has not brought any of the perpetrators to justice, and has not initiated any actions to address the consequences of the massacre. Additionally, the IACHR asked the Court to direct the State of Guatemala to adopt pecuniary and non-pecuniary reparations and to pay legal costs and expenses for domestic and international actions brought on behalf of the victims and their families.

The State of Guatemala withdrew all its preliminary objections, and acknowledged its international and institutional responsibilities in the case and accepted the facts that gave rise to the petitions before the IACHR and the Court. During the final hearing, the State of Guatemala expressed "its deep regret for the facts that took place at and were suffered by the community of Plan de Sánchez, on July 18, 1982, for which reason on behalf of the State it apologize[d] to the victims, the survivors and the next of kin; as a first demonstration of respect, reparation, and as a guarantee of non-recidivism.

In its Decision, the Court declared to, among others:

find, in accordance with the terms of the acknowledgment of international responsibility made by the State, that the latter breached the rights set forth in Articles 5(1) and 5(2) (Right to Humane Treatment); 8(1) (Right to Fair Trial); 11 (Right to Privacy); 12(2) and 12(3) (Freedom of Conscience and Religion); 13(2) paragraph a and 13(5) (Freedom of Thought and Expression), 16(1) (Freedom of Association), 21(1) and 21(2) (Right to Property), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights; and that it did not fulfill the obligation to respect rights set forth in Article 1(1) of that Convention, as set forth in paragraphs 47 and 48 of the instant Judgment.

The Court however did not pass upon the allegation of genocide because according to it, genocide is not covered by any of the regional conventions and instruments that it is mandated to interpret.

### a. Inter-American Defender and Victims' Assistance Fund<sup>144</sup>

#### **What is the Inter-American defender?**

The Inter-American Defender is a person or group of persons, appointed by the Court in cases where the alleged victims do not have duly accredited legal representation.

#### **What kind of expenses can be covered by the Legal Assistance Fund?**

- gathering and sending documentary evidence;
- expenses derived from the appearance of the alleged victim, witnesses and experts in hearings held by the Commission; and
- other expenses considered pertinent by the Commission for the processing of the case.

#### **What is the purpose of the Inter-American Public Defender?**

The Court has considered that for the effective defense of human rights and the consolidation of the Rule of Law, it is necessary that all people be assured the necessary conditions to be able to access both national and international justice and effectively assert their rights and liberties. Providing legal assistance to those who lack economic resources or legal representation, on one hand, prevents discrimination with regards access to justice that is not based on the economic position of the plaintiff, and on the other hand, allows a skillful and adequate defense in Court.

#### **What is the Victims' Legal Assistance Fund?**

The Legal Assistance Fund of the Court facilitates access of persons who do not currently have the necessary resources to the Inter-American System of Human Rights to bring their case to the System. Once a case is submitted to the Court, anyone who lacks the economic capacity to settle the expenses to be incurred in the process is able to request aid specifically from the Victims' Fund.



The website of the OAS has a specific page containing most information on their work on Indigenous Peoples, including on (a) rapporteur on Indigenous Peoples; (b) hearings of cases; (c) decisions and jurisprudence of both the IACHR and the IACtHR, (d) activities and initiatives; and (e) press releases. Check the following link

<http://www.oas.org/en/iachr/indigenous/decisions/iachr.asp>

## 2. The European System

### **a. The European Court of Human Rights.**

The European Court of Human Rights (ECHR) was established in 1959 and currently holds office in Strasbourg, France. It is an international court that allows complaints, referred to as “applications,” to be lodged by any person regardless of nationality or any State, in relation to the failure, non-compliance or violation of a Member-State of human rights obligations under the European Convention on Human Rights entered into force in 1953. This Convention established the ECHR which renders judgment on applications submitted, and can issue “**emergency protective measures**”/ interim measures, when the applicant faces imminent, grave or serious irreparable harm. Judgments of the ECHR are binding, and the concerned State is under obligation to comply.

Under the Convention, the 47-member States of the Council of Europe are under obligation to ensure the protection of civil and political rights of all individuals, regardless of citizenship, within their jurisdictions. The Convention, in particular, protects the:

- the right to life
- the right to a fair hearing
- the right to respect for private and family life
- freedom of expression
- freedom of thought, conscience and religion and,
- protection of property

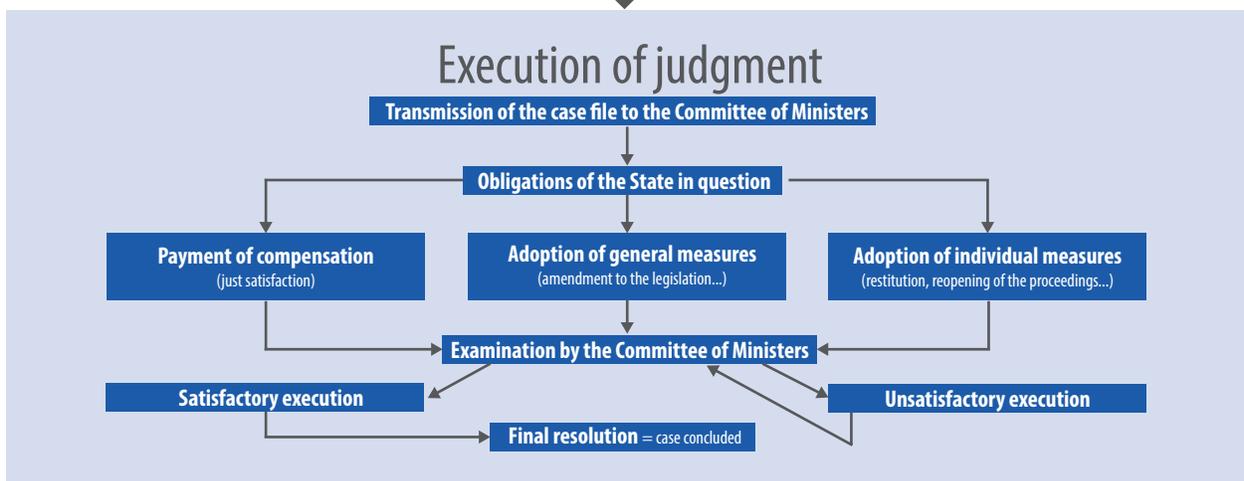
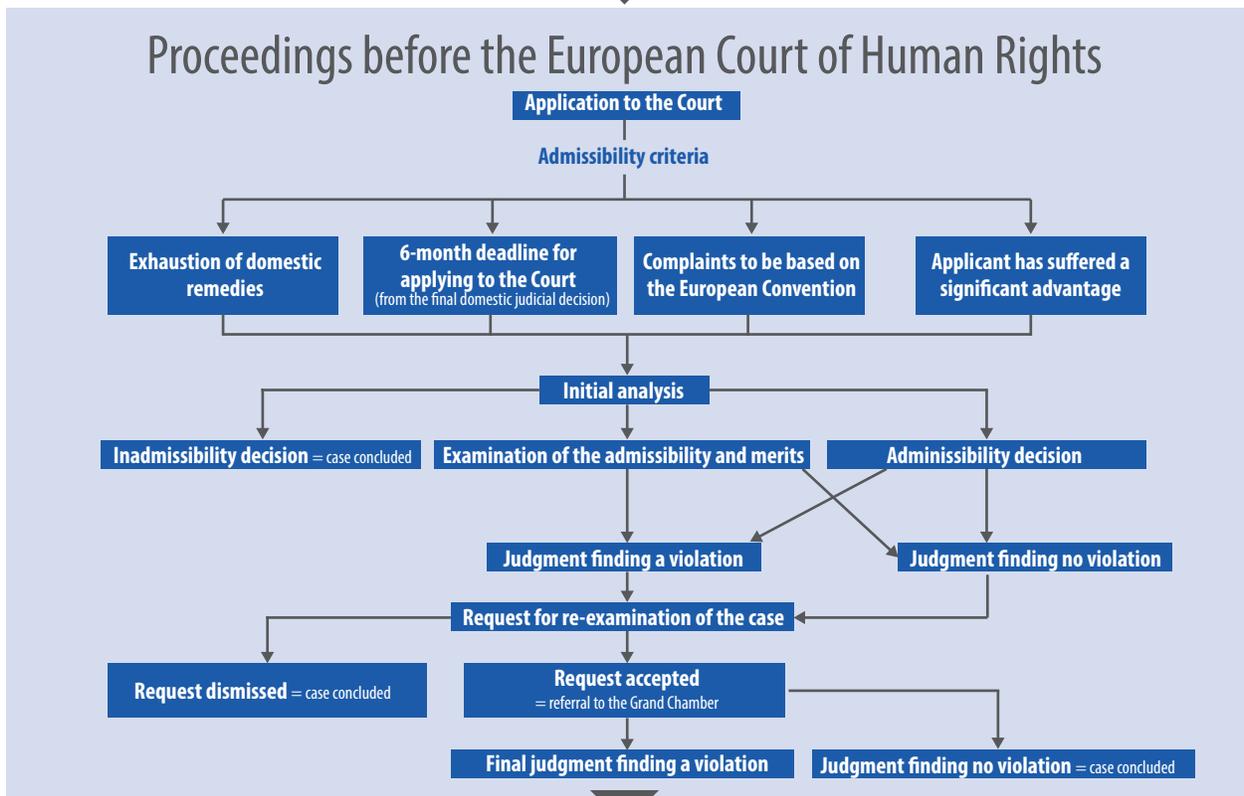
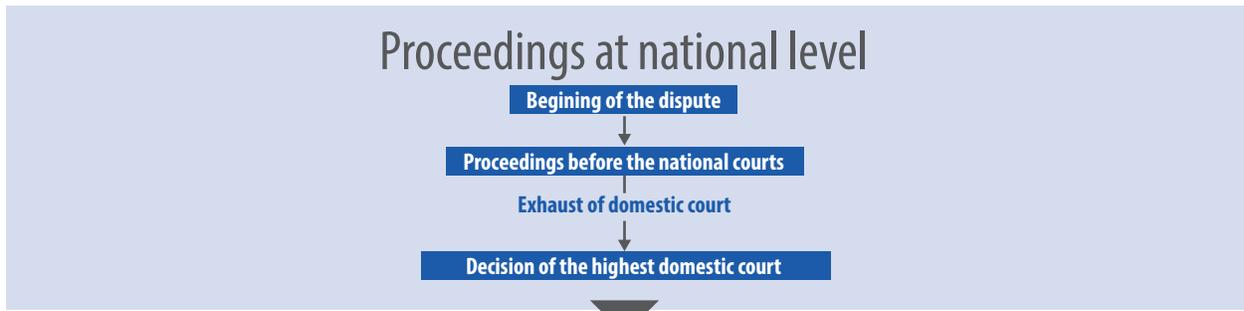
On the other hand, the Convention prohibits, among others:

- torture and inhumane or degrading treatment or punishment
- slavery and forced labour

- death penalty
- arbitrary and unlawful detention, and
- discrimination in the enjoyment of the rights and freedoms set out in the Convention

Important information	
Where to file or submit an "application" before the ECHR?	The Registrar European Court of Human Rights Council of Europe F-67075 Strasbourg cedex
Basic Information in submitting an application	<ul style="list-style-type: none"> <li>• Applications must be submitted by post to the above address, although copies of these applications may also be submitted through fax or online in certain cases, but these methods do not exclude the submission by post. Online submission is currently allowed only for limited languages.</li> <li>• Template application form and other important documents in lodging an application are available online - <a href="https://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&amp;c=">https://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&amp;c=</a></li> </ul>
Rules of Court of the ECHR	This can be found in the ECHR website - <a href="https://www.echr.coe.int/Documents/PD_written_pleadings_ENG.pdf">https://www.echr.coe.int/Documents/PD_written_pleadings_ENG.pdf</a>  Rule 47 governs the requirements for the filing of an application.
European Convention on Human Rights	The full text of the Convention may be accessed online <a href="https://www.echr.coe.int/Documents/Convention_ENG.pdf">https://www.echr.coe.int/Documents/Convention_ENG.pdf</a>
Procedure in submitting an application, procedure before the ECHR, required documents to be submitted, etc.	The ECHR website has adequate information on the requirements and procedure for the submission of an application, procedure before the ECHR, etc. It includes "questions and answers" to assist applicants to the ECHR. The information is currently available in 38 different languages, mostly of Member-States. Refer to this specific weblink - <a href="https://www.echr.coe.int/Pages/home.aspx?p=applicants&amp;c=#n1357809352012_pointer">https://www.echr.coe.int/Pages/home.aspx?p=applicants&amp;c=#n1357809352012_pointer</a>  An application packet is also provided online: <a href="http://www.echr.coe.int/Documents/PO_pack_ENG.pdf">http://www.echr.coe.int/Documents/PO_pack_ENG.pdf</a>
What is the ECHR not able to do?	<ul style="list-style-type: none"> <li>• "The Court does not act as a court of appeal in relation to national courts; it does not rehear cases, it cannot quash, vary or revise their decisions.</li> <li>• "The Court will not intercede directly on your behalf with the authority you are complaining about. In exceptional circumstances, the Court may, however, grant interim measures. As a matter of practice, it only does so where there is a serious risk of physical harm to the applicant.</li> <li>• "The Court will not help you find or pay a lawyer to draw up your application.</li> <li>• "The Court cannot give you any information on legal provisions in force in the State against which your complaints are directed. 145</li> </ul>
What are the forms of relief that can be declared by the ECHR?	If the ECHR finds that there has been a violation, it may award the applicant with "just satisfaction," a sum of money in compensation for certain forms of damage.  The ECHR may also require the State concerned to refund the expenses incurred by the applicant in presenting the case.  If the Court finds that there has been no violation, the applicant will not have to pay any additional costs (such as those incurred by the respondent State).

**The Life Cycle of an Application**



## Admissibility of applications



### **Tuğluk and Others v. Turkey**

4 September 2018 (decision on the admissibility)

The applicants, who are lawyers, were temporarily barred by the judicial authorities from representing their client Abdullah Öcalan to ensure that they will not transmit their client's statements to the press. Accounts of their visits were published in the following days in certain newspapers, where they were seen conveying their client's opinions on the current situation or giving instructions to the PKK (Kurdistan Workers' Party).

The Court declared the application inadmissible, being manifestly ill-founded, and that the sanction imposed on the applicants had no repercussion on their professional activities vis-à-vis their clients other than Abdullah Öcalan. The sanction had constituted a non-disproportionate response to their actions, since their conduct had contravened the rules governing their office. It noted in particular that the measures taken by the Turkish authorities aimed to prevent the applicants from exploiting their visits to their client in order to establish communication between him and his former armed organisation, and they had met a pressing social need, namely to prevent any violent or terrorist acts.

For an application to be admitted for consideration by the ECHR, there are certain criteria to determine admissibility, under Rule 35 of the Rules of court. These criteria include:

1. The **person who is filing the claim** must be clearly identified and cannot be anonymous, but may request anonymity or confidentiality. An applicant may either be an individual, a juridical person, a political party, human rights organization, a political entity like a State.
2. **Exhaustion of domestic remedies** must be established, showing that relevant courts and internal complaint procedures within the country were resorted to before submitting the application to the ECHR. In exceptional circumstances where “no real prospect of success” is shown, this criterion may be relaxed.
3. **Timeliness of the application.** The application must be filed (deemed filed upon actual receipt of the ECHR) within six (6) months from the date of the final decision from the available domestic remedies
4. The proper bases for claims are violations of the European Convention on Human Rights, and these must be clearly stated in the application. **Incompatible ratione materiae** applies

when the applicant relies on the right that must be protected by the ECHR which is contained in the Convention. Additionally, the alleged violation has to have been committed by the State or State agents (**Incompatible ratione personae**).

5. The alleged victim has suffered a **significant disadvantage**, indicating that the alleged violation has reached a minimum level of severity to be considered by the ECHR.
6. The **form and substance of the application**. An application will not be accepted if it is “**manifestly ill founded**,” misleading, vexatious, devoid of real purpose, or uses offensive language. Rule 47 of the Rules of Court lays down the basic and necessary information that the application must contain:
  - a. The name, date of birth, nationality, sex, occupation and address of the applicant
  - b. The name, occupation and address of the representative, if any
  - c. The name of the Contracting Party or Parties against which the application is made
  - d. A succinct statement of the facts
  - e. A succinct statement of the alleged violation(s) of the Convention and the relevant arguments
  - f. A succinct statement on the applicant’s compliance with the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention
  - g. The object of the application
  - h. Must be accompanied by copies of any relevant documents and in particular the decisions, whether or judicial or not, relating to the object of the application.<sup>146</sup>
7. The **jurisdiction** of the ECHR is limited to acts that occurred within the territory or jurisdiction of a Member State.
8. **Redundant applications** or those that are identical to an already existing application, will not be accepted.



### **Gülcü v. Turkey**

19 January 2016

This case concerned the conviction and detention of a minor for two years for membership to the PKK (Kurdish Workers' Party), an illegal armed organisation, after he participated in a demonstration held in Diyarbakır in July 2008 and threw stones at police officers. He was also convicted of disseminating propaganda in support of a terrorist organisation and resistance to the police. The applicant complained about this conviction for having participated in a demonstration and alleged that the combined sentence imposed on him had been disproportionate.

The Court held that there had been a violation of Article 11 (freedom of assembly and association) of the Convention. It noted that even if the applicant had been convicted of an act of violence against police officers, there was nothing to suggest that when he joined the demonstration, he had any violent intentions. Furthermore, it took issue with the fact that the domestic courts failed to provide any reasons for his conviction of membership to the PKK or of disseminating propaganda in support of a terrorist organisation. Moreover, it also noted the extreme severity of the penalty – a total of seven years and six months' imprisonment – imposed on the applicant who was only 15 years old at the time of the incident. He had partly served the sentence for a period of one year and eight months, after having been detained for almost four months pending trial. The Court therefore concluded that given the applicant's young age, the harshness of the sentence imposed was disproportionate to the legitimate aims of preventing disorder and crime and the protection of the rights and freedoms of others.

The list of the 47 member countries of the Council of Europe, who may be brought to account before the ECHR are:

Name of Country	Name of Country	Name of Country	Name of Country
Albania	Andorra	Armenia	Austria
Azserbaijan	Belgium	Bosnia and Herzegovina	Bulgaria
Coratia	Cyprus	Czech Republic	Denmark
Estonia	Finland	France	Georgia
Germany	Greece	Hungary	Iceland
Ireland	Italy	Latvia	Liechtenstein



### Ali Gürbüz v. Turkey

12 March 2019

This case concerned seven sets of criminal proceedings brought against the applicant for publishing in his daily newspaper, statements by the leaders of organisations characterised as “terrorist” under Turkish law. He was acquitted after proceedings that lasted between five and over seven years, without having been remanded in custody. He submitted that the proceedings in question had put pressure on him as a media professional due to the duration and despite his acquittal at the end of each set of proceedings.

The Court held that there had been a violation de l’article 10 (freedom of expression) of the Convention, finding that the numerous sets of criminal proceedings against the applicant had been prolonged for a considerable length of time on the basis of serious criminal charges. These did not meet a pressing social need, were not proportionate to the legitimate aims pursued (protection of national security and territorial integrity) and were not necessary in a democratic society. The Court noted that the opening of the proceedings could be seen as a reaction by the authorities to suppress, under the criminal law, the publication of statements by leaders of organisations characterised as “terrorist” under Turkish law, without having regard to their content, though they could be regarded as contributing to a public debate on questions of general interest. The Court explained that enforcement measures automatically taken against media professionals, without considering their intentions or the public’s right to be informed of other views on a conflict situation, could not be reconciled with the freedom to receive or impart information or ideas.

Lithuania	Luxembourg	Malta	Monaco
Montenegro	Netherlands	North Macedonia	Norway
Poland	Portugal	Republic of Moldova	Romania
Russian Federation	San Marino	Serbia	Slovak Republic
Slovenia	Spain	Sweden	Switzerland
Turkey	Ukraine	United Kingdom	

## b. Court of Justice of the European Union (CJEU)

The CJEU, also known as the European Court of Justice was established to interpret and apply laws of the European Union (EU) and ensure that all 28-member States of the EU abide by the EU laws. These laws include the treaties of the EU like the Fundamental Rights of the European Union, European Convention for the Protection of Human Rights and Fundamental Freedoms. The CJEU has authority to hear cases related to human rights.

As of September 16, 2020, the Member-States of the EU are:

Countries		
Austria	Belgium	Bulgaria
Croatia	Cyprus	Czechia
Denmark	Estonia	Finland
France	Germany	Italy
Ireland	Latvia	Lithuania
Luxembourg	Malta	Netherlands
Poland	Portugal	Romania
Slovakia	Spain	Sweden

The CJEU is divided into two (2) courts:

1. **Court of Justice** is composed of 27 Judges and 11 Advocates General. It has jurisdiction over (a) preliminary rulings from national courts; (b) actions for failure to fulfill obligations; (c) actions for annulment; (d) actions for failure to act; and (e) appeals. A number of jurisprudence of the Court of Justice involved issues relating to **freedom of movement of goods, freedom of movement of persons, freedom to provide services, equal treatment and social rights, fundamental rights, European citizenship.**<sup>147</sup>

2. **General Court** is composed of two judges from each Member State. Cases before the General Court are heard by chambers of five or three judges, or a single judge, or a grand chamber of 15 judges when the circumstances require. The general court rules on actions for annulment brought by individuals, companies, or EU governments and thus deals mainly with competition law, State aid, trade, agriculture, and trademarks. Notable jurisprudence by the General Court was issued on topics of **environment and consumers, freedom to provide services, law on the EU institutions, trademarks including intellectual and industrial property.**

Stages of cases before the CJEU:<sup>148</sup>

Written stage	<ul style="list-style-type: none"> <li>• The parties give written statements to the Court and observations can also be submitted by national authorities, EU institutions and sometimes, private individuals.</li> <li>• All of these are summarised by the judge-rapporteur and then discussed at the Court's general meeting which decides:             <ul style="list-style-type: none"> <li>» How many judges will deal with the case: 3, 5 or 15 judges (the whole Court), depending on the importance and complexity of the case. Most cases are dealt with by 5 judges, and it is rare for the whole Court to hear the case.</li> <li>» Whether a hearing (oral stage) needs to be held and whether an official opinion from the advocate general is necessary.</li> </ul> </li> </ul>
Oral stage – a public hearing	<ul style="list-style-type: none"> <li>• Lawyers from both sides can put their case to the judges and advocate general, who can question them.</li> <li>• If the Court has decided that an Opinion of the advocate general is necessary, this is given some weeks after the hearing.</li> <li>• The judges then deliberate and give their verdict.</li> </ul>
<ul style="list-style-type: none"> <li>• General Court procedure is similar, except that most cases are heard by three judges and there are no advocates general.</li> </ul>	

### What does the CJEU do?

The CJEU gives rulings on cases brought before it. The most common types of case are:

- interpreting the law (preliminary rulings) – national courts of EU countries are required to ensure EU law is properly applied, but courts in different countries might interpret it differently. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law.
- enforcing the law (infringement proceedings) – this type of case is taken against a national government for failing to comply with EU law and can be started by the European Commission or another EU country. If the country is found to be at fault, it must rectify at once, or risk a second case being brought, which may result in a fine.
- annulling EU legal acts (actions for annulment) – if an EU act is believed to violate EU treaties or fundamental rights, an EU government, the Council of the EU, the European Commission or (in some cases) the European Parliament can ask the Court to annul it by. Private individuals can also ask the Court to annul an EU act that directly concerns them.
- ensuring the EU takes action (actions for failure to act) – the Parliament, Council and Commission must make certain decisions under certain circumstances. If they don't, EU governments, other EU institutions or (under certain conditions) individuals or companies can complain to the Court.
- sanctioning EU institutions (actions for damages) – any person or company whose interests have been harmed as a result of the action or inaction of the EU or its staff can take action against them through the Court.

Source: Court of Justice of the European Union - [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en#composition](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en#composition), last accessed on September 10, 2020.



For more information, check the website of the European Court of Justice:

[https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en)



### Contact Details of the European Court of Justice:

#### 1. Address:

Palais de la Cour de Justice  
Boulevard Konrad Adenauer  
Kirchberg  
L-2925 Luxembourg  
Luxembourg

#### 2. Telephone numbers:

Tel+352 4303 1; Fax+352 4303 2600

#### 3. Send communication online:

[https://curia.europa.eu/jcms/jcms/T5\\_5133/](https://curia.europa.eu/jcms/jcms/T5_5133/)

## c. Other European Human Rights Mechanisms

### The European Committee for the Prevention of Torture (CPT)

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a specialised independent monitoring body of the Council of Europe composed of independent and impartial experts including lawyers and doctors who are experts in prison and police matters. The main method of work of CPT is prison and detention center visits. Detention centers include juvenile detention centers, immigration detention centers, psychiatric hospital, or social care home. CPT members are cloaked with unlimited and unrestricted access to all types of prison and detention, and should be able to freely communicate with persons in detention.

The CPT is a preventive, not an investigative body and thus does not conduct allegations of ill treatment, torture or degrading treatment, but may refer such allegations to the Member-State concerned. As a preventive body, the CPT ensures that the systems and procedures of Member-States protect persons in detention from any torture, inhumane or degrading treatment. The CPT produces reports from the visits it conducts, and submits these reports to the authorities concerned. These reports are confidential unless the concerned State authorizes publication. Considering this method of work, the CPT does not act on individual complaints.

The opportunity for individuals or organizations to engage with the CPT is to contribute information during country visits, so this can be considered in the country report. Information should be written, comprehensive and should contain evidence. It is therefore essential for individuals and civil society/human rights organizations to be informed of the schedules of CPT visits.



Information about country visits:  
<https://www.coe.int/en/web/cpt-visits#2020>

More information about the CPT:  
<https://www.coe.int/en/web/cpt/home>

### **The European Instrument for Democracy and Human Rights (EIDHR)**

The EIDHR is a programme established by the European Union with the goal to implement its policies of providing support for the promotion and protection of democracy and human rights in non-EU countries through political dialogue, diplomatic initiatives, and financial and technical cooperation.<sup>149</sup> It supports individuals and civil societies who defend democracy and human rights, as well as inter-governmental organizations implementing international mechanisms for human rights.

Assistance under the EIDHR may take the following forms:<sup>150</sup>

- projects and programmes
- grants to finance projects submitted by civil society and/or international/intergovernmental organizations
- small grants to human rights defenders
- grants to support operating costs of the Office of the UN High Commissioner for Human Rights and the European Inter-University Centre for Human Rights and Democratisation (EIUC)
- human and material resources for EU election observation missions
- public contracts

The selection of projects funded under the EIDHR takes place in several ways:<sup>151</sup>

- global calls for proposals: the projects cover all the objectives of EIDHR and are selected by the Commission in consultation with its local delegations.
- country calls for proposals managed by local EU delegations: they are specific to one country (Country Based Support Schemes – CBSS) and cover local projects designed to reinforce the role of civil society in promoting human rights and democratic reforms, in facilitating peaceful reconciliation of group interests, and in consolidating political participation and representation .
- direct support to Human Rights Defenders through small grants: when quick intervention through small and targeted actions is needed, the European Commission manages a small facility to provide ad-hoc grants of up to 10.000 Euro to be awarded to human rights defenders in need of urgent support either by headquarters or by EU Delegations.

### **European Union’s Agency for Fundamental Rights (FRA)**

The FRA was established to provide independent, evidence-based advice to EU institutions and Member States on matters relating to fundamental rights, more particularly on (a) discrimination; (b) access to justice; (c) racism and xenophobia; (d) data protection; (e) victims’ rights; and (f) children’s rights. It also helps in the promotion and protection of fundamental rights across the EU by collecting and analyzing information and data through socio-legal research, and providing assistance and expert advice through communications and awareness-raising.

While its work is towards assistance to EU institutions and Member States, FRA maintains partnerships with various stakeholders to ensure that its projects address specific gaps and needs. These stakeholders include EU national governments and parliaments, the Council of Europe, groups and organizations working on fundamental rights and the Fundamental Rights Platform, national human rights institutions, the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and other international organizations.

### **European Commission’s Department for International Cooperation and Development – EuropeAid**

EuropeAid is responsible for the formulation of EU policies on international partnership and development to reduce poverty, ensure sustainable development and promote democracy, human rights and the rule of law across the world. To achieve these goals, EuropeAid works together with countries across the world to achieve their sustainable development plans. It also works with networks of non-government organizations (NGOs) through dialogues and consultations to strengthen responses for the promotion of human rights. The NGO networks that EuropeAid partners with include the Confederation for Cooperation of Relief and Development NGOs (CONCORD), European Network of Political Foundations (ENOP), European Peace-Building Liaison Office (EPLO), International Trade Union Confederation (ITUC) and the Human Rights and Democracy Network (HRDN).<sup>152</sup>

### **3. African Human Rights System**

The 1963 charter that established the Organization of African Unity (OAU), now the African Union (AU), required all Member States to have due regard for human rights as set forth in the Universal Declaration of Human Rights, in their international relations. Efforts to establish a regional human rights system were met with hostilities and challenges, and the drafting of the African Charter for human rights (African Charter) started in 1979. It was only on June 28, 1981 that the African Charter (also called the Banjul Charter) was adopted. Presently, all 55 Member States of the AU ratified the African Charter.

The African Charter affirms the indivisibility of rights, non-derogation of rights, and the duties of everyone to respect human rights. Distinctively, it recognizes peoples' rights including the rights to development, free disposal of natural resources, and self-determination. This recognition has always been interpreted to include the collective rights of Indigenous Peoples to their lands, territories and resources, and to their culture.

Over the years, the OAU/AU adopted several regional treaties. Quite a number of these relate to human rights. See the list of key human rights instruments in **Annex E**.

Within the structure of the AU, certain organs handle judicial and legal matters, including human rights. These are African Commission on Human and Peoples' Rights (ACHPR), African Court on Human and Peoples' Rights (AfCHPR), AU Commission on International Law (AUCIL), AU Advisory Board on Corruption (AUABC) and the African Committee of Experts on the Rights and Welfare of the Child. This manual/guide will focus on the two bodies that play a key role in the protection of human rights in the region – The ACHPR and the AfCHPR.

#### **3.1. African Human and Peoples' Rights (ACHPR)**

The ACHPR was established by virtue of the African Charter (Article 30), to promote and ensure the protection of human and peoples' rights. It is composed of eleven (11) members serving in their personal and independent capacities, and chosen by the AU assembly based on their reputation, high regard for morality, integrity, impartiality and competence in matters relating to human and peoples' rights.

Article 45 of the Charter further elaborates the mandate of the ACHPR:

- Promotion of human and peoples' rights;
- Protection of human and peoples' rights;
- Interpretation of the Charter

The Commission is mandated to interpret the provisions of the Charter upon a request by a state party, organs of the AU or individuals. No AU organ has referred any case of interpretation of the Charter to the Commission. However, a handful of NGOs have approached the Commission for interpretation of the Charter's various articles. The Commission has also adopted many resolutions expounding on the provisions of the Charter.

- Any other task assigned to it by the AU assembly

**Promoting human and peoples' rights:**

ACHPR promotes human rights through awareness raising and capacity building activities including public mobilization, information dissemination, seminars, symposia, conferences and missions. It also undertakes studies and researches, and collects documents in the field of human and peoples' rights, and engages with national and local institutions sometimes through recommendations or opinions on matters relating to human and peoples' rights. It is mandated to develop principles and rules for solving legal problems relating to human and peoples' rights upon which African governments may base their legislations.

ACHPR has also collaborated with NGOs and inter-governmental organizations for the establishment of a documentation center for human rights studies and research. Likewise, it partners with various stakeholders including national human rights institutions, in carrying out activities to promote human and peoples' rights in the region. Each Commissioner is assigned States within the AU for promotional activities that include country visits and conducts activities like lectures and symposia. Special Rapporteurs are likewise appointed to conduct research and data gathering to support the ACHPR in its mandate to advise and propose recommendations to Member States. The Special Rapporteurs at this time are:

- Special Rapporteur on Prisons and other Places of Detention in Africa;
- Special Rapporteur on Arbitrary, Summary and Extra-judicial Executions;
- Special Rapporteur on the Human Rights of Women in Africa

**Protecting human and peoples' rights**

The protective mandate required the ACHPR to take measures to ensure that every citizen enjoys the rights laid down in the African Charter. It achieves this mandate through its communication procedure, friendly settlement of disputes, state reporting that includes civil society or NGOs' shadow reports, urgent appeals and other activities of Special Rapporteurs and working groups and missions.

***Communications Procedure***

The **communications procedure** is a complaint system through which an individual, an organization or group of individuals may submit petitions for alleged violations of human rights. A State may also file a petition against another State for violations of any of the provisions of the African Charter.

<b>Important Information in the Communications Procedure of the ACHPR</b>	
Who may file a Petition?	<ol style="list-style-type: none"> <li>1. Individual, organization or group of persons, against a State, for violation of human rights under the African Charter; or</li> <li>2. A State, against another State, for violation of the provisions of the African Charter</li> </ol>
Admissibility	<ol style="list-style-type: none"> <li>1. Exhaustion of domestic remedies. The ACHPR can only entertain communications after domestic remedies have been exhausted, unless such remedy is not available or unduly prolonged;</li> <li>2. Time Period. The communication must be submitted within a reasonable period from the time local remedies were exhausted or from the date the ACHPR "is seized of the matter" or the case.</li> <li>3. Duplication or procedures at the international level. The ACHPR does not deal with cases that have been settled by concerned States in accordance with the principles of the UN Charter, charter of the OAU/AU or the African Charter.</li> </ol>
Inadmissibility	<p>A communication may be declared inadmissible if:</p> <ol style="list-style-type: none"> <li>(1) The author/petitioner is not indicated, although authors may request for anonymity; Indicate their authors even if the latter request anonymity,</li> <li>(2) The matter is not covered by the Charter of the OAU or with the African Charter;</li> <li>(3) written in disparaging or insulting language directed against the State concerned and its institutions or to the AU.</li> </ol>
Process	<ol style="list-style-type: none"> <li>1. Submission of Petition</li> <li>2. Determination of admissibility</li> <li>3. Notice to State concerned and request for comments</li> <li>4. Additional information may be requested from both parties</li> <li>5. Resolution and recommendations; if human rights violations are determined to have been committed, recommendations may include measures to remedy the victim.</li> </ol>
Interim Measures	<p>In emergency situations, when imminent danger or when there is a threat of an irreparable damage or injury to the victims of human rights violations, the ACHPR, even before its final consideration of a petition, may communicate to the State party concerned, to take measures to prevent or avoid irreparable damage or injury; or issue other interim measures that are necessary in the interest of the parties for the proper conduct of the proceedings before it.</p>
Friendly Settlement	<p>In certain cases where amicable settlement is possible, the ACHPR may initiate the process for a negotiation between the parties towards the amicable resolution of the dispute or issue.</p>

**Seven requirements for submitting a communication to the African Commission:**<sup>153</sup>

To be admissible, the communication must satisfy seven criteria:

1. **Provide the author's name, even if the author requests anonymity.**
  - The communication should stipulate whether it is from a victim, an individual acting on behalf of the victim, or a human rights organization.
  - The communication must include contact information of the individual or the organization's representatives.
  - An individual submitting a communication must provide their name, address, age, and profession. If the individual wishes to remain anonymous, they must expressly request anonymity.
2. **Specify the African Charter provisions alleged to be violated.**
  - The communication must be brought against a State Party to the African Charter.
  - The communication must clearly identify the right(s) in the African Charter that the government has violated.
  - The communication may also highlight violations of additional principles adopted by the Commission, if relevant. The commission's declarations are available here: [http://www.achpr.org/english/\\_info/index\\_declarations\\_en.html](http://www.achpr.org/english/_info/index_declarations_en.html).
  - The communication must provide evidence to support the allegations of rights violations.
  - The violation must have occurred after the country ratified the African Charter. Dates of ratification are available here: [http://www.achpr.org/english/ratifications/ratification\\_african%20charter.pdf](http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf).
3. **Avoid disparaging or insulting language.**
  - Insulting language will render a communication inadmissible, regardless of the seriousness of the allegations.
4. **Rely on first-hand information.**
  - Communication should rely, at least in part, on primary sources of information, such as personal accounts, witness statements, or government documents. Some information in the communication may be based on news disseminated through the mass media.
  - Communications based exclusively on news disseminated by the mass media are inadmissible.
5. **Describe efforts to exhaust domestic remedies.**
  - Communication must provide evidence of efforts to exhaust domestic remedies. Such evidence could include judgments of the competent courts in the country, including the highest court.
  - If the author of the communication has not exhausted domestic remedies, the author must explain why. See "Practitioner's tip: Three criteria for determining whether a domestic remedy is required."

**6. Be timely.**

- The African Commission has determined that communications should usually be submitted no later than six months after exhaustion of domestic remedies.
- The African Commission may consider a communication submitted later if it includes a compelling reason for the delay.

**7. Do not request reexamination of a case that has been decided on the merits.**

- The African Commission will not take a case that has already reached a final settlement on the merits in accordance with the principles of the African Charter or the UN Charter.
- The African Commission may consider a case that has already been examined, so long as no action was taken and no pronouncements were made on the merits of the case.



**Address for submitting petitions/communications:**

The African Commission on Human and People's Rights  
P O Box 673, Banjul  
The Gambia  
Tel: 220 392962  
Fax: 220 390764  
E-mail: [achpr@achpr.org](mailto:achpr@achpr.org)  
Web-site: [www.achpr.org](http://www.achpr.org)



More information about the communications procedure, including the rights covered, and the format of the communication, are contained in Annex F, Guidelines for the submission of communications.

You may access information online: <https://www.achpr.org/communicationsprocedure>

### ***Periodic Reports***

Each Member State is required to submit periodic reports, every two (2) years, to the ACHPR, stating legislative or other measures that the State has undertaken to give effect to the human and peoples' rights and freedoms recognized in the African Charter. This is an important opportunity to evaluate what a State has done, or is not doing, and what still needs to be done to advance human and peoples' rights. A state report submitted by a state party to the Charter must address the following:

- Measures taken to give effect to the provisions of the Charter
- Progress made so far
- Challenges affecting the implementation of the Charter and the relevant supplementary instruments

After the States submit their reports, the ACHPR schedules a dialogue with their representatives in relation to their reports. Individuals, organizations and civil society may request for copies of the State report and submit counter-reports (also called shadow reports) or recommend questions to the ACHPR that can be propounded during its dialogue with the State. The shadow reports may highlight omissions and discrepancies in the States' reports. At the end of the process, the ACHPR issues its concluding observations based on all the information that it received, specifying steps which the States should adopt to remedy identified violations or gaps in the implementation of the African Charter.

### ***Special Mechanisms***

In line with the ACHPR's mandate to "employ any appropriate method of investigation in carrying out its responsibilities,"<sup>154</sup> special mechanisms such as special rapporteurs, working groups and committees have been established over the years, with mandates to investigate human rights violations, conduct research on human rights issues and undertake promotional activities such as seminar, fora, conferences, and workshops through country visits. Reports of special mechanisms form part of the references of the ACHPR's resolutions. Special Rapporteurs are appointed from among the Commissioners while working groups may have a mix of membership from the Commission and independent experts.

**Country missions** may be conducted by the ACHPR through the special mechanisms to investigate allegations of massive and serious human rights violations. These missions recommend to the State concerned how to address human rights violations and improve human rights situation within its jurisdiction. Indigenous Peoples and civil society organizations may take the opportunity during country missions to submit information on human rights situation and take part in meetings organized by the ACHPR.

**Important information and references in writing a shadow report to the ACHPR:**

There is no specific format for Shadow Reports; but it is strongly advised that the shadow report is structured based on the rights referred to in the African Charter, and refer to the government report or the absence of it.

The Shadow Report must contain information on the country's name, submitting organization, session number and dates, on the front page.

**Sample Shadow Reports:**

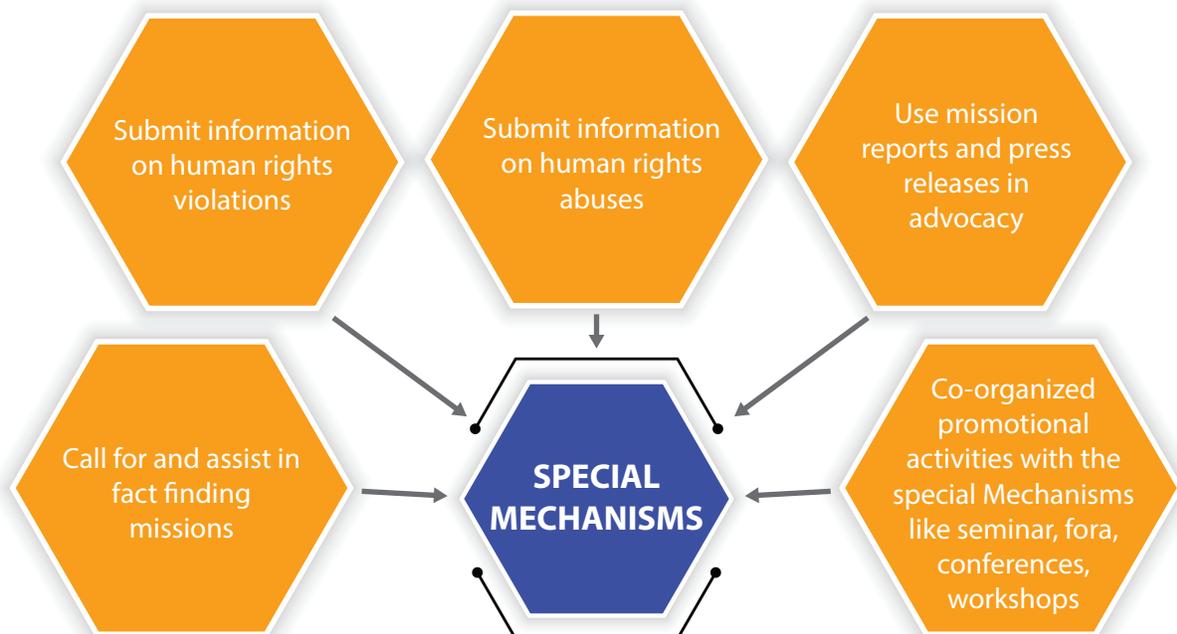
Shadow Report to the African Commission on Human and Peoples' Rights in Response to the 6th periodic report of Cameroon - <https://www.hrw.org/news/2020/03/30/shadow-report-african-commission-human-and-peoples-rights-response-6th-periodic>

- Nigeria: shadow report to the African Commission on Human and Peoples' rights, 62nd Ordinary session - <https://www.amnesty.org/en/documents/afr44/8265/2018/en/>
- State reports and concluding observations: <https://www.achpr.org/statereportsandconcludingobservations>
- State reporting procedures and guidelines: <https://www.achpr.org/statereportingproceduresandguidelines>
- Schedule of sessions and guidance for participation: <http://www.achpr.org/sessions/>
- ACHPR: Rules of Procedure of the African Commission on Human and Peoples' Rights [http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules\\_of\\_procedure\\_2010\\_en.pdf](http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf)
- ACHPR: Information Sheet No 4: State Reporting Procedure [http://old.achpr.org/english/information\\_sheets/ACHPR%20inf.%20sheet%20No.4.doc](http://old.achpr.org/english/information_sheets/ACHPR%20inf.%20sheet%20No.4.doc)
- Road map for civil society engagement: State reporting procedure of the ACHPR [http://www.conectas.org/arquivos/Conectas\\_Roadmap\\_AfricanCommission\\_ENG.pdf](http://www.conectas.org/arquivos/Conectas_Roadmap_AfricanCommission_ENG.pdf)

Presently, there are five special rapporteurs, five working groups and two committees, excluding the internal mechanism:

Special Rapporteurs	Working Groups	Committees
Special Rapporteur On Prisons, Conditions Of Detention And Policing In Africa	Working Group On Indigenous Populations/Communities And Minorities In Africa	Committee For The Prevention Of Torture In Africa
Special Rapporteur On Rights Of Women	Working Group On Economic, Social And Cultural Rights	Committee On The Protection Of The Rights Of People Living With HIV (PLHIV) And Those At Risk, Vulnerable To And Affected By HIV
Special Rapporteur On Freedom Of Expression And Access To Information	Working Group On Death Penalty, Extra-Judicial, Summary Or Arbitrary Killings And Enforced Disappearances In Africa	
Special Rapporteur On Human Rights Defenders And Focal Point On Reprisals In Africa	Working Group On Rights Of Older Persons And People With Disabilities	
Special Rapporteur On Refugees, Asylum Seekers, Internally Displaced Persons And Migrant In Africa	Working Group On Extractive Industries, Environment And Human Rights Violations	

### How do Indigenous Peoples and civil society engage with the Special Mechanisms?<sup>155</sup>



## Interpretation of the African charter

One of the mandates of the ACHPR is to interpret the provision of the African Charter upon the request of a State party, an institution of the AU or an African organization recognized by the AU. This mandate has not been used or maximized by State parties and institutions of the AU as shown by the lack of requests for interpretation from these groups. On the other hand, NGOs have sought and obtained, through draft resolutions, interpretation of some of the provisions of the African Charter. As a result, ACHPR has issued resolutions clarifying and interpreting some of the ambiguous provisions of the Charter.

### Civil society plays a pivotal role in the activities of the commission (ACHPR) and can engage with the commission in a range of ways to further advocate on issues of concern

- Alert the commission to violations of the African Charter;
- Submit communications/complaints on behalf of individuals whose rights have been violated;
- Monitor governments' compliance to their obligations under the African Charter and other human rights treaties;
- Attend the commission's public sessions;
- Submit shadow reports as part of the periodic reporting process;
- Publicize and conduct advocacy about the commission's concluding observations; and
- Increase awareness about the commission's activities.

Source: *Human Rights Tools for a Changing World: A step-by-step guide to human rights fact-finding, documentation and advocacy*, The Advocates for Human Rights, January 2015, page 270.

## Positive impacts of engagements with the ACHPR

The Charter's complaints mechanism provides an important avenue for recourse of complainants who could not find redress at the national level. In a number of instances, the Commission's findings have been implemented. The findings of the Commission assisted in garnering international awareness and solidarity, as was the case in Nigeria during the Abacha regime.

National courts are increasingly influenced by and use the Charter and the Commission's findings to assist them in interpreting national law. Prominent examples are the Constitutional Court of Benin, which in numerous cases made reference to the African Charter, and in some applied it directly; and the Court of Appeal of Lesotho which relied on the African Charter together with other international human rights treaties in *Molefi Ts'epe v The Independent Electoral Commission*.

The findings of the Commission also reverberated in the jurisprudence of national courts outside Africa, in the judgments of regional courts (such as the case of *Campbell v Zimbabwe*, decided by the SADC Tribunal), and even the International Court of Justice (for example, in the case of *Diallo (Republic of Guinea v Democratic Republic of the Congo)*).

*Source: A guide to the African Human Rights System, Centre for Human Rights, University of Pretoria, Pretoria University Law Press, 2016.*

### Decisions of the ACHPR affecting Indigenous Peoples

The African Charter is the first international binding instrument on the protection of human rights that explicitly provides for justiciable collective rights alongside individual rights. It provides for the right to self-determination (article 20), the right to equality (article 19); the right to freely dispose of their wealth and natural resources (article 21); the right to development (article 22); the right to peace and security (article 23); and the right to a satisfactory environment (article 24).<sup>156</sup> These rights are relevant to Indigenous Peoples in the protection of their rights. While the African Charter did not define "peoples," the ACHPR has always interpreted it to include Indigenous Peoples, and has in fact elaborated on the protection of Indigenous Peoples' rights in its Decisions by recognizing their collective rights including their right to their lands and natural resources, and the collective dimension of individual rights.



## 1. SERAC v. Nigeria (2001) AHRLR 60 (ACHPR 2001)

The Nigeria National Petroleum Corporation (NNPC), a state-owned oil corporation and Shell Petroleum Development Corporation, a multinational company, were accused of causing severe environmental degradation on the lands and territories of the Ogoni people. The oil exploration contaminated their land and water sources, and gravely affected farming and fishing which were the primary means of livelihood of the Ogoni people. The government of Nigeria was also accused of impunity because it condoned the acts of the two corporations when it failed to act on numerous petitions by the Ogoni people for the conduct of environment and social impact assessments. The Ogoni people also averred that they have not given their consent to the oil companies' operation. The Ogoni people's protests against the oil exploration were always met with violence committed by security forces who attacked the people, burned their houses and destroyed their villages.

**DECISION OF THE ACHPR:** The ACHPR held that the Nigerian government violated the African Charter and appealed for the cessation of attacks on Ogoni communities, to ensure adequate compensation for victims of the violations, and to undertake the necessary environmental and social impact assessments for future oil development. The ACHPR declared that 'Governments have a duty to respect their citizens, not only through appropriate legislation and enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties.' It went on to say that 'The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfillment of such other rights as health, education, work and political participation ... The minimum core of the right to food requires that ... government should not destroy or contaminate food sources.'

## 2. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2009) AHRLR 75 (ACHPR 2009)

The government of Kenya was accused of forcibly removing the Endorois Indigenous Peoples from their ancestral lands around Lake Bogoria, without proper consultation and compensation. The forcible removal prevented the Endorois people from accessing their lands including their religious sites located along the lake.

**DECISION OF THE ACHPR:** In its Decision, the ACHPR held that 'The right to development is a two-pronged test ... it is useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development... it is not simply the state providing, for example, housing for individuals or peoples, development is instead about providing people with the ability to 'choose where to live.' The ACHPR also elaborated on the rights of Indigenous Peoples in Africa when it ruled that the Endorois culture, religion and traditional ways of life are intimately intertwined with their ancestral lands. The government of Kenya was found to have violated the African Charter and was urged to allow the Endorois community unrestricted access to Lake Bogoria and its surroundings for religious and cultural purposes; to pay compensation to the Endorois community for damage suffered; and to pay royalties to the Endorois people for the ongoing economic activities in the area.

### 3.2. African Court on Human and Peoples' Rights (the Court)

The Court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. The Protocol) was adopted by Member States of the then Organisation of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998 and came into force on 25 January 2004. It complements and reinforces the functions of the ACHPR.

The 30 States that ratified the Protocol and are covered by the jurisdiction of the Court are: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, Comoros, Congo, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi,



**African Court**  
on Human and Peoples' Rights

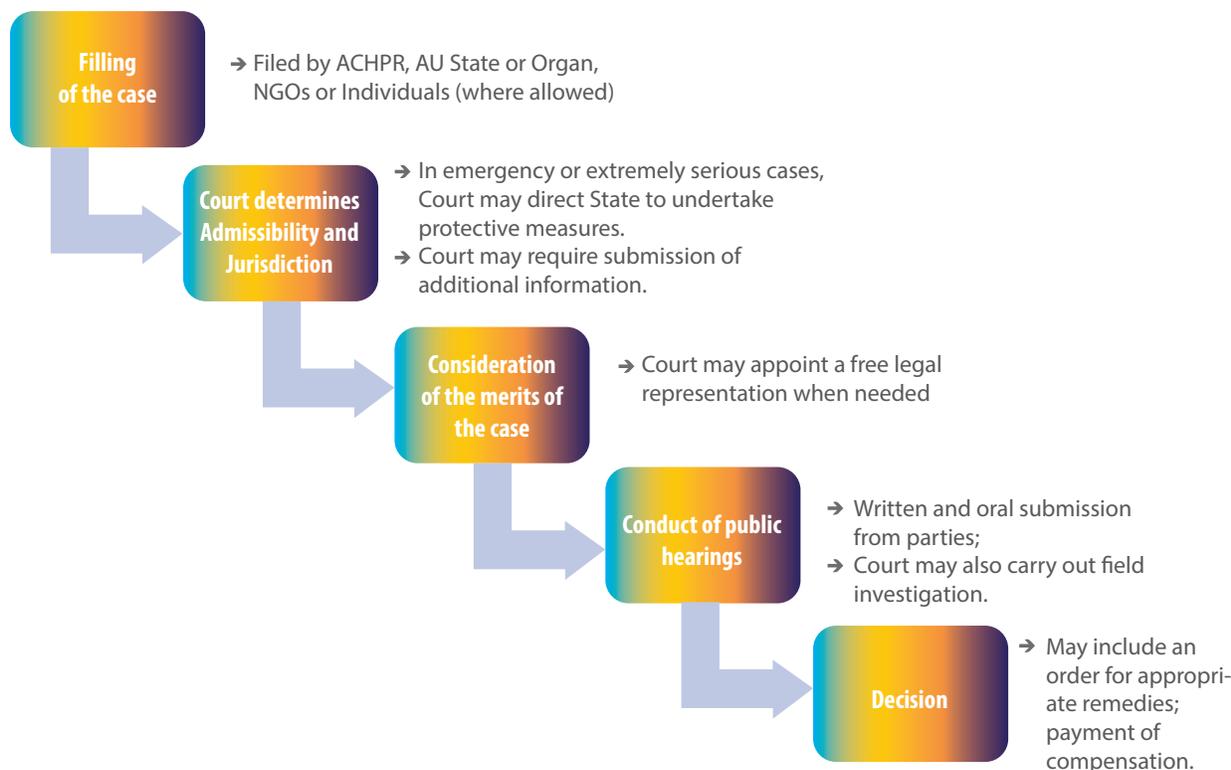
Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda. Out of these 30, only nine (9) States made the declaration recognizing the competence of the Court to receive cases from NGOs and individuals. The nine (9) States are: Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Mali, Malawi. The Court currently holds office in Arusha, United Republic of Tanzania.

The jurisdiction of the Court involves cases and disputes concerning the interpretation and application of the African Charter on Human and Peoples' Rights (African Charter), the Protocol, and any other relevant human rights instrument ratified by the concerned States. Those who may file cases before the Court are the ACHPR, State parties to the Protocol, African Intergovernmental Organizations, NGOs with observer status before the ACHPR, and individuals. Complaints from individuals and NGOs may only be recognized when the State concerned has made the declaration recognizing the jurisdiction of the Court over complaints filed by individuals.<sup>158</sup> Where States have not made such declaration, NGOs and individuals, using the communications procedure, may go through the ACHPR to file a case before the Court. Once the ACHPR finds the State to have violated the African Charter, it may file the appropriate case before the Court.

The Court has two types of jurisdiction: contentious and advisory. Contentious jurisdiction is (a) personal since it applies only to States that have ratified the Court's Protocol; (b) material, as it refers only to human rights treaties under the AU as well as other human rights treaties ratified by the State concerned; and (c) temporal because the Court's jurisdiction only applies to cases that happened after the Protocol came into force, except in cases of continuing violations. Advisory jurisdiction of the Court applies when AU member States, AU organs or any African organization recognized by the AU seeks the advisory opinion of the Court on any matter within its jurisdiction.

As a Court, its Decisions are binding and enforceable and the government concerned is obliged to remedy human rights violations in accordance with the Court's judgment.

## Procedure in the African Court



### All applications before the Court must:<sup>159</sup>

- Use one of the official languages of the African Union (English, French, Arabic, Portuguese, Spanish, Kiswahili and any other African Language<sup>160</sup>);
- Provide a summary of the facts, the alleged violation, and the evidence to be cited to prove those facts;
- Provide proof of exhaustion of domestic remedies “or the inordinate delay of such local remedies;”
- Clearly state the remedies the applicant seeks;
- Be signed by the applicant or a representative;
- Include the name and address of the applicant’s representative;
- Include the name of the applicant, even if the applicant requests anonymity;



#### Applications should be submitted to:

##### Registry of the Court

P.O. Box 6274

Arusha

Tanzania

Fax: +255-732-97 95 03

Email: [registry@african-court.org](mailto:registry@african-court.org)

\*Applications and other materials may be submitted by post, email, fax, or courier.

- Include a request for reparations, if appropriate;
- Be filed within a reasonable time after the date domestic remedies were exhausted, or by the deadline set by the court;
- Not use disparaging or insulting language;
- Not raise any matter or issues previously settled by the parties under any jurisdiction of the UN, the AU, or any other legal instrument of the AU.

When making a claim for reparations, applicants should address the following:<sup>161</sup>

Victim(s)	<ul style="list-style-type: none"> <li>• Who is the victim named in the application?</li> <li>• Explain whether/how s/he suffered harm due to the violation?</li> <li>• Individual(s) or a Group?</li> <li>• Direct victim(s) or indirect victim(s)?</li> <li>• If an individual victim(s) – elaborate the harm suffered</li> <li>• If a group of victims – elaborate the group harm suffered</li> </ul>
Violations	<ul style="list-style-type: none"> <li>• Which articles and instruments were violated?</li> <li>• Nature of the violation (how was the violation carried out?)</li> <li>• Impact of the violation on the Applicant, next-of-kin, the community (if applicable)</li> </ul>
Forms of reparations sought (if applicable)	<p>Explain the types of reparations sought, linking them to the degrees/forms of harm suffered (Applicants can claim one form of reparation or a combination of the forms of reparation).</p> <ul style="list-style-type: none"> <li>• Restitution</li> <li>• Compensation</li> <li>• Rehabilitation</li> <li>• Satisfaction</li> <li>• Guarantees of Non-Repetition</li> <li>• Costs</li> </ul>
Evidence	<p>For each claim, provide as much documentary evidence as possible. Explain challenges or limitations encountered in providing evidence due to circumstances of the case, conditions of the applicant or the victims.</p>



### Helpful references in relation to the Court:

Factsheet on filing reparation claims, African Court on Human and Peoples' Rights - [http://www.african-court.org/en/images/Basic%20Documents/Reparations\\_Fact\\_Sheet-FINAL\\_25\\_Nov\\_2019.pdf](http://www.african-court.org/en/images/Basic%20Documents/Reparations_Fact_Sheet-FINAL_25_Nov_2019.pdf)

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights - <https://www.african-court.org/en/images/Basic%20Documents/afri-cancourt-humanrights.pdf>

Rules of Court of the African Court on Human and Peoples' Rights - [https://www.african-court.org/en/images/Basic%20Documents/Rules\\_of\\_Court\\_-\\_25\\_September\\_2020.pdf](https://www.african-court.org/en/images/Basic%20Documents/Rules_of_Court_-_25_September_2020.pdf)

Practical Guide - The African Court on Human and Peoples' Rights (FIDH) - [http://www.fidh.org/IMG/pdf/african\\_court\\_guide.pdf](http://www.fidh.org/IMG/pdf/african_court_guide.pdf)



### African Commission of Human and Peoples' Rights v The Republic of Kenya (the Ogiek case)

The Court's Decision in this case was its first judgment in relation to Indigenous Peoples rights.

This case refers to around 20,000 Ogiek people, who live in the Mau Forest, central Rift Valley in Kenya. In 2009, they were served with an eviction notice by officials of the Kenyan Forest Service that required them to leave within 30 days from service of notice. According to the notice, the forest constitutes a reserve water catchment zone and it is owned by the State. The Ogiek people opposed the eviction.

#### Case is filed before the ACHPR

In a case before the ACHPR in 2009, the Ogiek, represented by Ogiek Peoples Development Program (OPDP) and CEMIRIDE, argued that the action of the government violates their rights to life, property, natural resources, development, religion, culture and non-discrimination, which are all protected under the African Charter. Finding serious and massive human rights violations, the ACHPR referred the case to the Court in 2012.

CONTINUED ON NEXT PAGE



### **Provisional Measure**

On March 15, 2013, after finding that the situation is of extreme gravity and urgency and will likely result in irreparable damage, the Court issued a provisional measures order directing the government of Kenya to (i) immediately reinstate the restrictions it had imposed on land transactions in the Mau Forest Complex, and (ii) refrain from any act/thing that would/might irreparably prejudice the main application, until the African Court gives its final decision in the case. However, despite the order for provisional measures, the Ogiek people reported that police intimidation continued and approximately 1,000 of them were violently evicted from their land.

### **Decision of the Court**

On May 26, 2017, the Court issued its first landmark decision in relation to Indigenous Peoples in Africa, finding the Kenyan government responsible for violations of at least seven (7) separate articles of the African Charter. In finding that the Kenyan government violated the Ogieks' right to property, it referred to their right to their land, which they occupied since time immemorial, and thus their right to occupy the same. The Court said that the Ogieks' right to possession and unhindered use of their territories are integral to their right to their ancestral lands. The Court held that by excluding the Ogieks from their ancestral lands against their will and without prior consultation, the Kenyan government has violated Article 14 of the Charter. On the Ogieks' right to culture, the Court pronounced that "It is natural that some aspects of indigenous population's culture, such as certain ways of dressing or group symbols, could change over time. Yet the values, mostly the invisible tradition of values embedded in the self-identification [of Indigenous Peoples] often remain unchanged." The Court went on to declare that the changes in the Ogieks' way of life were caused by the State's treatment of them and denial of their access to their lands. On the right to free disposal of wealth and natural resources (Article 21), "the Court suggests, was originally intended to secure the populations of countries struggling against foreign domination and colonisation. So the Court asks: does the Article also apply to sub-state ethnic groups and communities? The Court notes that the Charter does not define 'peoples' allowing some flexibility in the interpretation of the concept. As a result, it finds that ethnic groups and communities can indeed claim the rights secured under Article 21, "provided such groups or communities do not call into question the sovereignty and territorial integrity of the State without the latter's consent." This right, the Court emphasises, does not amount to a right to self-determination and independence but must be read, rather, as connected to the right to land. In particular, the Court finds that insofar as Kenya's denial of the Ogieks' access to their land resulting in depriving the community of free access to and disposal of food and other resources on that land, such an action amounts to a violation of Article 21."<sup>162</sup>

The ruling of the court is significant for the Ogiek people but it also sent a strong message to all member States of the AU to respect Indigenous Peoples' rights, especially to their right to their lands, territories and resources.

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

The ACERWC was established by virtue of Article 32 of the African Charter on the Rights and Welfare of the Child (Children's Charter). It is composed of eleven (11) independent experts of high moral standing, integrity, impartiality and competence in matters concerning the rights and welfare of the child. They are nominated by State parties and elected by the AU Assembly of Heads of States and Government.

The mandate of the ACERWC is to promote and ensure the protection the rights of children as enshrined in the Children's Charter.<sup>163</sup> Its functions include:<sup>164</sup>

- a. To promote and protect the rights enshrined in this Charter and in particular, the rights and welfare of the child;
- b. To monitor the implementation and ensure protection of the rights enshrined in the Children's Charter.
- c. To interpret the provisions of the Children's Charter at the request of a State Party, an institution of the Organization of African Unity or any other person or institution recognized by the Organization of African Unity, or any State Party.
- d. Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

Indigenous Peoples, civil society organizations and NGOs have several opportunities of engagement with ACERWC and have proven to be significant sources of information on the status of children's rights in Africa.

#### Reporting Procedure

State parties to the Children's Charter are required to submit their reports within two (2) years from the entry of force of the charter in relation to the State concerned, and within three (3) years thereafter. State reports shall: (a) contain sufficient information on the implementation of the Children's Charter to provide the Committee with comprehensive understanding of the implementation of the said charter in the relevant country; and (b) indicate factors and difficulties, if any, affecting the fulfillment of the obligations contained in the Children's Charter. The ACERWC provides guidelines<sup>165</sup> in the submission of State reports that should contain:

- General measures of implementation of the Children's Charter
- Definition of the child
- General principles
- Civil rights and freedoms
- Family environment and alternative care
- Health and welfare

- Education, leisure and cultural activities
- Special protection measures
- Responsibilities of the child

When the first State party report already contains a comprehensive discussion of general information on the State party, it need not repeat the same information in succeeding reports.

The State reporting procedure provides Civil society organizations, Indigenous Peoples and other stakeholders with an opportunity for engagement and advocacy, through:

- Submission of **shadow reports** that will also contain information and discussions around the same themes as recommended to be contained in a State party report. It may respond to specific information contained in State party reports and should provide concrete examples of violations of children's rights by the State party;
- Speak at the Pre-Session Working Group. This meeting is by invitation only, so organizations intending to participate in this meeting should submit a request for invitation upon submission of their shadow report;
- Non-State stakeholders may also submit suggested questions to ACERWC members. During the public plenary to discuss the State report, the committee members may direct these questions to representatives of the State party;
- Lobbying may also be done with members of the ACERWC before and during the period of the session, by requesting to have meetings with the rapporteur assigned or to any member of the committee, and presenting their issues and concerns;
- Participation in the Civil Society Forum on the Rights and Welfare of the Child that takes place before each regular session of the ACERWC. The forum supports ACERWC's work by providing a platform for information-sharing, networking and advocacy. This forum is a venue where organizations working on the rights of the child, children's rights experts, and AU representatives come together to discuss children's rights issues and to develop resolutions and recommendations for the ACERWC. During the formal session, the



#### Where to send shadow reports:

**Secretariat of African Committee of Experts on the Rights and Welfare of the Child**  
 African Union Commission  
 Department of Social Affairs  
 P.O. Box 3243  
 Roosevelt Street (Old Airport Area)  
 W21K19, Addis Ababa, Ethiopia



For more information on the Civil Society Forum on the Rights and Welfare of the Child

<http://www.csoforum.info>

Civil Society Forum is given an opportunity to present its resolutions and recommendations to the committee.

- f. Use the conclusions and recommendations of the ACERWC for advocacy at the national level.

### Communications

A communication is a complaint alleging violation of a provision of the Children's Charter. ACERWC has the authority to receive communications from any person, group or NGO recognized by the Organization of African Unity, by a Member State, or the UN, relating to any matter covered by this Charter. This is very similar to the communications procedure of the ACHPR, and undergoes: (a) admissibility process; (b) consideration of the merits; (c) issuance of decision; and (d) implementation and monitoring of the committee's decision. All communications must contain the name and address of the author, and will be treated with confidence by the committee.



For references and additional information on communications before the ACERWC:

1. Revised Guidelines for the Consideration of Communications Provided for in Article 44 of the African Charter on the Rights and Welfare of the Child, [https://www.acerwc.africa/wp-content/uploads/2018/07/Revised\\_Communications\\_Guidelines\\_Final-1.pdf](https://www.acerwc.africa/wp-content/uploads/2018/07/Revised_Communications_Guidelines_Final-1.pdf)
2. For a list of communications submitted and decisions made by the ACERWC: <https://www.acerwc.africa/table-of-communications/>
3. Guidelines on the implementation of decisions of ACERWC: <https://www.acerwc.africa/guidelines-for-implementation-of-decisions-on-communications/>

### Investigations by the ACERWC

ACERWC, through sub-committees or working groups, may undertake investigations in relation to any matter in the Children's Charter. An investigation may be initiated: (a) when a matter is referred to the ACERWC; (b) on the committee's initiative following an individual complaint under the communications procedure; and (c) upon invitation by a State party. If the investigation is done through a country visit, ACERWC has to be officially invited by the State party concerned.

The aim of the investigation missions shall be to seek and collect accurate and reliable information on any issue arising from the Children's Charter in order to:<sup>166</sup>

- a. assess the general situation of the rights of the child in a country;
- b. clarify the facts and establish responsibility of individuals and the State towards children who are victims of violations and their families, and/or
- c. promote and support the implementation of the rights and welfare of the child by the various administrative, legal and legislative institutions of the country, in conformity with the Children's Charter.

Results of these investigations are submitted by the committee in a report to the regular session of the Assembly of Heads of State and Governments, which happens every two (2) years. The reports are made public and made widely available.

Civil society and NGOs may engage in this process by submitting information to the committee, suggest places to visit and organizations or persons to meet with during country visits. When the committee submits its report, civil society and NGOs may use the report for advocacy.



For more information on investigations:

Guidelines on the conduct of investigations by the African Committee of Experts on the Rights and Welfare of the Child - [https://www.acerwc.africa/wp-content/uploads/2018/07/ACERWC\\_Guidelines\\_on\\_Investigation.pdf](https://www.acerwc.africa/wp-content/uploads/2018/07/ACERWC_Guidelines_on_Investigation.pdf)



Information on the terms of references of each Special Rapporteur, and the current mandate holder may be found here - <https://www.acerwc.africa/special-rapporeurs/>

## Special Rapporteurs

In accordance with Rule 58 of ACERWC's Revised Rules of Procedure, ten (10) members are appointed as Special Rapporteurs on thematic areas:

- Violence against children
- Children and Armed Conflict
- Birth Registration, Name and Nationality
- Child marriage and Other Harmful Practices
- Child Participation
- Children in Vulnerable Situations
- Health, Welfare and Development
- Children on the Move
- Children in Conflict with the Law, Parental Responsibilities and Child Responsibilities
- Education

The mandate of these Rapporteurs include: (a) setting standards and developing strategies to better promote and protect children's rights; (b) conducting missions and undertaking various studies as well as cooperating; and (c) engaging in dialogue with Member States, national human rights institutions, relevant intergovernmental organizations, international and regional mechanisms, UN Agencies and civil society organizations.<sup>167</sup>

### 3.4. African Peer Review Mechanism

The African Peer Review Mechanism (APRM) is a self-monitoring mechanism voluntarily agreed on by Member States of the AU where they evaluate each other's quality of governance to improve governance dynamics, rule of law and respect for human rights at the local, national and regional levels. The APRM reviews four areas: (a) democracy and political governance; (b) economic governance and management; (c) corporate governance; and (d) socio-economic development. Its mandate is elaborated in the Statute creating it.<sup>168</sup>

1. The APRM has the mandate to promote and facilitate self-monitoring by the Participating States, and to ensure that their policies and practices conform to the agreed political, economic, corporate governance and socio-economic values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance; and the African Charter on Democracy, Elections and Governance, as well as other relevant treaties, conventions and instruments adopted by Participating States whether through the African Union or through other international platforms.

- In the implementation of its mandate, the APRM has the primary purpose of fostering the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable and inclusive development, as well as accelerated regional and continental economic integration, through sharing of experiences and reinforcement of successful and best practices.

#### Five stages of the APRM



Helpful Resources and reference and for additional information:

- Questionnaire for States for their self-assessment - <https://www.aprm-au.org/publications/country-self-assessment-questionnaire/>
- Guidelines for Countries to Prepare for and to Participate in the African Peer Review Mechanism - <https://www.aprm-au.org/publications/aprm-guidelines/>
- Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism - <https://www.aprm-au.org/publications/objectives-standards-criteria-and-indicators/>

### Opportunities for civil society to engage in the APRM<sup>169</sup>

Stages of APRM	Civil Society engagement
<p>Country support missions.</p> <p>These missions are organized by the APRM Secretariat to support and provide necessary assistance to States in the national process of their self-assessment review.</p>	<p>During these missions, meetings between APRM Secretariat and civil society may be held. Civil society may present concerns, issues and suggestions in relation to the country’s self-assessment, including on the proposed national process, composition of the national APRM structures, councils, or other bodies; civil society access to and engagement with the national APRM Focal Point; and other logistical, structural, and organizational issues.</p>
<p>Country self-assessment.</p> <p>The APRM Base Document<sup>170</sup> requires that the self-assessment process includes broad and diverse civil society consultations, in every stage:</p> <ul style="list-style-type: none"> <li>• The date the government intends to launch the self-assessment process;</li> <li>• Formation and composition of the country’s national governing body;</li> <li>• When and how civil society can submit information to the governing body;</li> <li>• The length of time the government has allocated for the entire self-assessment process;</li> <li>• The date of the national stakeholders’ conference where they will review draft self-assessment;</li> <li>• When the government plans to produce its final self-assessment report;</li> <li>• When the APRM Secretariat’s Country Review Team will conduct its official review mission; and</li> <li>• At what stage the government will need to submit its final draft Program of Action and Country Report to the APRM Panel for consideration.</li> </ul>	<p>All these activities should be made known to diverse national stakeholders including civil society organizations and they should be allowed to participate and be given fair opportunity to contribute to the self-assessment. If such opportunity is denied or curtailed by the government, civil society may submit a complaint to the APRM Secretariat who can raise the matter to the country.</p>
<p>National governing body and technical research agencies</p>	<p>Civil society can have seats in the country’s national governing body. They should advocate and push to have this seat. APRM Panel always ensures that civil society and NGOs have their seats in the governing body.</p> <p>At this stage, the country may also choose to use technical research agencies to conduct and collate surveys and other materials. When this happens, civil society and NGOs are often preferred to conduct this research.</p>

<p>Country review mission</p> <p>During review missions, the APRM team usually meets with various stakeholders from government/its agencies and NGOs to evaluate the assessment process.</p>	<p>Civil society and NGOs can take this opportunity to submit information about critical issues and information if civil society was sufficiently allowed participation and engagement in the process, and any complaints or grievances about the self-assessment process.</p>
<p>Implementation and monitoring of Program of Action</p>	<p>Civil society plays a key role in the implementation and monitoring of the Program of Action as they stand to call out on the government to comply with its obligations and demand accountability.</p> <p>Where Programs of Action include civil society and NGOs as implementing partners, they must grab that opportunity so that they can engage with the government in improving human rights, democracy and governance.</p>

### 3.5. African Sub-regional Human Rights Mechanisms

#### 3.5.a. Economic Community of West African States (ECOWAS) Community Court of Justice (ECOWAS Court)

The ECOWAS Revised Treaty<sup>171</sup> established the ECOWAS Community Court of Justice in 1991, and made all Member States of the ECOWAS Community *ipso facto* parties to the Court's Statute. There are fifteen (15) countries (collectively referred to as the Community) belonging to the Community: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

#### Composition, Mandate and Jurisdiction

The ECOWAS Court consists of seven (7) judges appointed by the Authority of Heads of State and Government of the Community. It has its physical office in Abuja, Nigeria. The Court applies the revised ECOWAS Treaty, the Conventions, Protocols, and Regulations adopted by the Community and general Principles of Law. In the area of Human Rights Protection, the Court equally applies the international instruments on human rights ratified by the State or

For information:

SAIIA's APRM Toolkit is a comprehensive repository of APRM knowledge for continental practitioners, civil society members, academics, students, journalists and donors. It was designed to provide a single entry point for access to all of the most important APRM official documents and independent analysis of the process. The Toolkit contains founding documents, country review and progress reports, academic and civil society papers on the mechanism, APRM standards, as well as research and training materials published by SAIIA. You may access this online at <https://www.aprmtoolkit.saiia.org.za>

States party to the case, including the African Charter on Human and Peoples' Rights. Exhaustion of domestic remedies is not a requirement in the filing of an Application and individuals are allowed to submit Applications/Petitions.

The ECOWAS Court has advisory and contentious jurisdiction. It gives legal opinion or interpretation on any matter in relation to any text of any of the basic documents of the Community. Its contentious jurisdiction<sup>172</sup> covers:

- failure by Member States to honour their obligations under the Community law;
- dispute relating to the interpretation and application of acts of the Community;
- disputes between Institutions of the Community and their officials;
- cases dealing with liability for or against the Community;
- cases of violation of human rights that occur in any Member State;
- adjudges and makes declarations on the legality of Regulations, Directives, Decisions, and other subsidiary legal instruments adopted by ECOWAS.

## Practical Information<sup>173</sup> of the ECOWAS Court

### How to access the Court

Cases are filed before the Court through written Applications addressed to the Registry. Such applications must indicate the (a) name of the Applicant, (b) the Party against whom the proceedings are being instituted, (c) a brief statement of the facts of the case, clearly describing the human rights violation committed; (d) the law upon which the Application is based; and (e) the relief sought by the Plaintiff.

### Legal Force of Decisions of the Court

Decisions of the Court are not subject to appeal. However the court can entertain applications for a revision based on new facts. Decisions are also binding on Member States, institutions of the Community, Individuals and Corporate bodies.

### Method of implementation of judgment of the Court

Execution of any decision of the Court shall be in the form of a writ of execution, which shall be submitted by the Registrar of the Court to the relevant Member State for execution according to the rules of civil procedure of that Member State.

Upon the verification of the appointed authority of the recipient Member State that the writ is from the Court, the writ shall be enforced.

All Member States shall determine the competent national authority for the purpose of receipt and processing of the execution and notify the Court accordingly.

The writ of execution issued by the Community Court may be suspended only by a decision of the Court.

The Registry  
The Community Court  
of Justice, ECOWAS  
10 Dar Es Salaam  
Crescent, Off Aminu  
tKano Crescent, Wuse II,  
Abuja, Nigeria.

### 3.5.b. East African Court of Justice (EACJ)

The EACJ was established by virtue of the Treaty for the Establishment of the East African Community<sup>174</sup> (Treaty), Article 9. The East African Community is composed of Uganda, Kenya and Tanzania, Burundi and Uganda. The EACJ is the judicial arm of the Community which has other organs including the legislative assembly and the Summit consisting of heads of States of the member countries. It has the mandate to “ensure the adherence to law in the interpretation and application of and compliance of the Treaty,”<sup>175</sup> provides advisory opinions, issues preliminary rulings to national courts, and issues arbitral awards if contracts and agreements confer jurisdiction.<sup>176</sup>

It is composed of a First Instance Division and an Appellate Division. The First Instance Division has, at first instance, jurisdiction to hear and determine all cases brought before the Court. Exhaustion of domestic remedies is not a requirement. Decisions of the First Instance Division may be appealed to the Appellate Division.

The following persons or entities may file complaints before the EACJ:<sup>177</sup>

- A Partner State against another Partner State, and an organ or institution of the Community which has failed to fulfill an obligation or has infringed a provision of the Treaty;
- Legal or natural person seeking a determination on the legality of any Act, regulation, directive, decision or action of a Partner State on the ground that it is unlawful or infringes on the Treaty;
- Employees of the Community on disputes concerning the terms and conditions of their employment;
- The Secretary General of the EAC may file a Reference, under the direction of the EAC Council of Ministers, against a Partner State that fails to fulfill Treaty;
- Parties to commercial contracts may seek arbitration if their agreements have an arbitration clause giving the Court jurisdiction;
- The EAC Council of Ministers or a Partner State may request for an Advisory Opinion ; and
- National Courts and Tribunals can seek an interpretation or application of the Treaty or on questions of the validity of the regulations, directives, decisions or actions of the Community.

Applications before the EACJ should contain the following information:<sup>178</sup>

1. the name, designation, address and where applicable, the residence of the applicant;
2. the name, designation, address and where applicable, the residence of the respondent;
3. the subject matter of the reference and a summary of the points of law on which the reference is based;
4. where appropriate, the nature of any evidence to be offered in support; and
5. the reliefs sought by the applicant.

The registry and sub-registries are responsible for receiving document and complaints, and filing it with the EACJ. Sub-registries are located in each country and they receive complaints and documents, and transfer them electronically to the main registry. For the submission of applications/complaints, the following are the contact details:

The Registry	East African Court of Justice, 1st Floor, EAC Headquarters, Africa Mashariki Road, EAC Close, P. O. Box 1096, Arusha, Tanzania Tel: +255 27 2506093 Email: eacj@eachq.org
Sub-Registry, Burundi	Court Clerk – EACJ Sub-Registry Supreme Court Building 2nd Floor No.1 Tel: +257-771-185368 / 257-777-51536 Email: jnzokirishaka@eachq.org
Sub-Registry, Kenya	Court Clerk- EACJ Sub-Registry Milimani Courts 2nd floor, Room 269 Nairobi, Kenya Tel: +254-721-405806 Email: mochieng@eachq.org
Sub-Registry, Rwanda	Court Clerk-EACJ Sub-Registry High Court of Rwanda P.O. Box 2179 Kigali, Rwanda Tel: +250-788621398 Email: grusingiza@eachq.org
Sub-Registry, Tanzania	Court Clerk – EACJ Sub-Registry Court of Appeal building, P.O. Box 9004 Dar-es-Salaam, Tanzania Tel: +255-786-546475 Email: dmafwere@eachq.org
Sub-Registry, Uganda	Court Clerk-EACJ Sub-Registry Supreme Court of Uganda P.O. Box 6679 Kampala, Uganda Tel: +256-772-867747 Email: stweny@eachq.org



For more information about the EACJ:

1. 2019 Rules of Procedure - <https://www.eacj.org/wp-content/uploads/2020/04/FINAL-PUBLISHED-EACJ-RULES-OF-PROCEDURE-2019.pdf>
2. Decisions of First Instance Division - [https://www.eacj.org/?page\\_id=4878](https://www.eacj.org/?page_id=4878)
3. Decisions of Appellate Division - [https://www.eacj.org/?page\\_id=3846](https://www.eacj.org/?page_id=3846)

## SUGGESTED REFERENCE MATERIALS

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### I. Indigenous Peoples: Situation, Rights and Legal Framework

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Understanding the Indigenous and Tribal People Convention, 1989 (No. 169). Handbook for ILO Tripartite Constituents/International Labour standards Department. International Labour Organization. – Geneva, 2013.

State of the World's Indigenous Peoples, United Nations, 2009. Also accessible online at [https://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](https://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf).

Indigenous Peoples and the UN Human Rights System, 2013. Accessible online at: <https://www.refworld.org/pdfid/5289d7ac4.pdf>

- United Nations, 2008. Resource Kit on Indigenous Peoples' Issues. Accessible online at: [https://www.un.org/esa/socdev/unpfii/documents/resource\\_kit\\_indigenous\\_2008.pdf](https://www.un.org/esa/socdev/unpfii/documents/resource_kit_indigenous_2008.pdf)

### II. Monitoring, Documentation and Advocacy

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Indigenous Peoples Human Rights Defenders Field Handbook on Human Rights Documentation and Advocacy, Asia Indigenous Peoples Pact, 2015.

Human Rights Tools for a Changing World: A step-by-step guide to human rights fact-finding, documentation and advocacy, The Advocates for Human Rights, January 2015.

Anna Volz, *Advocacy Strategies Training Manual, General Comment No. 10: Children's Rights in Juvenile Justice*, Defence for Children International, 2009.

Karyn Kaplan, *Human Rights Documentation and Advocacy: A guide for organizations of people who use drugs*, Open Society Institute, 2009.

Office of the High Commissioner for Human Rights, "Working with the United Nations Human Rights Programme: A Handbook for Civil Society" (2008), 169, <http://www.ohchr.org/Documents/Publications/NgoHandbook/ngohandbook8.pdf>

A Guide to International Human Rights Mechanisms

[http://www.theadvocatesforhumanrights.org/international\\_human\\_rights\\_mechanisms\\_2.html](http://www.theadvocatesforhumanrights.org/international_human_rights_mechanisms_2.html) - A basic tool for international human rights advocacy with the UN and regional treaty bodies.

Simple Guide to UN Treaty Bodies

<http://www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies>

A guide to the African Human Rights System, Centre for Human Rights, University of Pretoria, Pretoria University Law Press, 2016.

Filing a communication before the African Commission on Human Rights: A Complainant's Manual, 2013, <https://www.eipr.org/en/press/2016/09/guide-filing-complaints-achpr> last accessed on September 30, 2020.

IHRDA and ISHR, "A Human Rights Defender's Guide to the African Commission on Human and Peoples' Rights,"

Andrea Galindo and Ellen-Rose Kambel (2015). Toolkit on the Inter-American Human Rights System for Indigenous Women. Accessible online at: <https://www.forestpeoples.org/topics/inter-american-human-rights-system/publication/2015/toolkit-inter-american-human-rights-syste>

Asia Pacific Forum of National Human Rights Institutions and the Office of the United Nations High Commissioner for Human Rights (2013). *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*. Accessible online at: <https://www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf>

## ANNEXES

### Annex A. Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism

#### INFORMATION AND GUIDELINES FOR RELEVANT STAKEHOLDERS<sup>1</sup> ON THE UNIVERSAL PERIODIC REVIEW MECHANISM

*[as of July 2008]*

##### I. BACKGROUND

1. The Universal Periodic Review (UPR), established by General Assembly resolution 60/251 of 15 March 2006, is a new human rights mechanism. Through the UPR, the Human Rights Council (HRC) reviews, on a periodic basis, the fulfillment by each of the United Nations' 192 Member States of their human rights obligations and commitments. Resolution 60/251 provides that the UPR shall:<sup>2</sup>
  - Be based on objective and reliable information of the fulfillment by each State of its human rights obligations and commitments;
  - Be conducted in a manner which ensures universality of coverage and equal treatment with respect to all States;
  - Be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; and
  - Complement and not duplicate the work of treaty bodies.
  
2. HRC resolution 5/1 of 18 June 2007 provides that the UPR should '*ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard*'.<sup>3</sup>

##### II. BASIS OF THE REVIEW

3. States are reviewed on the basis of:<sup>4</sup>

The Charter of the UN;

The Universal Declaration of Human Rights;

Human rights instruments to which the State is party;

<sup>1</sup> Stakeholders, which are referred to in resolution 5/1, include, *inter alia*, NGOs, national human rights institutions, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives.

<sup>2</sup> See operative paragraph (op.) 5(e).

<sup>3</sup> See para 3(m) of the Annex to resolution 5/1.

<sup>4</sup> See para 1 of the Annex to resolution 5/1.

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Voluntary pledges and commitments, including (where relevant) those undertaken when presenting candidature for election to the HRC; and

Applicable international humanitarian law.

### III. UNIVERSAL PERIODIC REVIEW AS A PROCESS

4. Reviewing all 192 UN Member States over a four-year cycle, the UPR is to be seen as a process consisting of several steps:

- Preparation of the information upon which reviews are based, including: (i) information prepared by the State under review (national report); (ii) a compilation of UN information on the State under review prepared by the OHCHR, and (iii) a summary of information submitted by other relevant stakeholders, also prepared by OHCHR. The UPR review is based on these three documents, all of which are public;
- The review itself takes place in Geneva in the Working Group on the UPR, composed of the 47 Member States of the HRC, and takes the form of an interactive dialogue held between the State under review and the Member and Observer States of the HRC. The Working Group meets in three two-week sessions each year and reviews 16 States at each session - a total of 48 States each year;
- The Working Group's adoption of an outcome document at the end of each review;
- The HRC's consideration and adoption of the UPR outcome, normally at the next regular HRC session; and
- Follow-up by reviewed States on the implementation of the conclusions and recommendations contained within outcome documents.

5. The participation of all relevant stakeholders is encouraged throughout all relevant steps of the process. According to Human Rights Council resolution 5/1 of 18 June 2007:

(a) States are encouraged to prepare the information they submit “through a broad consultation process at the national level with all relevant stakeholders” (paragraph 15 (a));

(b) Other relevant stakeholders may submit additional, credible and reliable information to the universal periodic review. Input received from stakeholders will be summarized by the Office of the High Commissioner for Human Rights in a Summary of Stakeholders' information which shall not exceed 10 pages (paragraph 15 (c));

(c) Other relevant stakeholders may attend the review in the working group (paragraph. 18 (c)), while not taking active part in the interactive dialogue;

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(d) Before the adoption of the outcome by the plenary of the Council, the State concerned is offered the opportunity to present replies to questions or issues; Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary (paragraphs 29 and 31);

(e) The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders (paragraph 33).

#### IV. CONTRIBUTING WRITTEN SUBMISSIONS TOWARDS THE UPR PROCESS

##### A. Documentation upon which reviews are based

6. The documents on which reviews are based are:<sup>5</sup>

- (a) Information prepared by the State concerned, which can take the form of a national report, on the basis of General Guidelines adopted by the HRC at its sixth session, and any other information considered relevant by the State concerned, which could be presented either orally or in writing, provided that the written presentation summarizing the information will not exceed 20 pages.
- (b) A compilation prepared by OHCHR of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents, which shall not exceed 10 pages.
- (c) Additional, credible and reliable information provided by other relevant stakeholders to the UPR which should also be taken into consideration by the HRC in the review. OHCHR will prepare a summary of such information which shall not exceed 10 pages.

##### B. Content and format of written submissions by relevant stakeholders to the OHCHR

7. HRC [decision 6/102](#)<sup>6</sup> sets out [General Guidelines](#) for the preparation of information under the UPR. These Guidelines (available at [http://ap.ohchr.org/documents/sdpage\\_c.aspx?b=10&sc=69&t=3](http://ap.ohchr.org/documents/sdpage_c.aspx?b=10&sc=69&t=3))

<sup>5</sup> See para 15 of the Annex to resolution 5/1

<sup>6</sup> Of 27 September 2007.

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apply to States and other stakeholders, as well as to OHCHR for the preparation of the documents under its responsibility.<sup>7</sup>

8. Drawing from the above-mentioned general guidelines, stakeholders may wish to include in their submissions:

(a) The methodology and the broad consultation process followed nationally for the preparation of information provided to the UPR by the country under review;

(b) The current normative and institutional framework of the country under review for the promotion and protection of human rights: constitution, legislation, policy measures such as national action plans, national jurisprudence, human rights infrastructure including national human rights institutions ...;

(c) The implementation and efficiency of the normative and institutional framework for the promotion and protection of human rights as described at subparagraph (b) above. This includes information on the implementation of the country's human rights obligations and commitments at the national and the international levels (for example information on the implementation of commitments made by the country under review at international conferences and other United Nations fora; of constitutional and legal reforms aimed at protecting human rights, of national action plans, of mechanisms and remedies aimed at improving human rights); on the activities of national human rights institutions; on human rights education and public awareness ....;

(d) Cooperation of the country under review with human rights mechanisms, and with national human rights institutions, NGOs, rights holders, human rights defenders, and other relevant national human rights stakeholders, both at the national, regional and international levels;

(e) Achievements made by the country under review, best practices which have emerged, and challenges and constraints faced by the country under review;

(f) Key national priorities as identified by stakeholders, initiatives and commitments that the State concerned should undertake, in the view of stakeholders, to overcome these challenges and constraints and improve human rights situations on the ground. This includes, for example, national strategies, areas where further progress is required, steps regarding implementation and follow-up to recommendations made by human rights mechanisms, commitments for future cooperation with OHCHR and human rights mechanisms and agencies, etc.;

<sup>7</sup> See section I. "General guidelines for the preparation of information under the Universal Periodic Review" of HRC [decision 6/102](#).

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(g) Expectations in terms of capacity-building and technical assistance provided and/or recommended by stakeholders through bilateral, regional and international cooperation.

9. Stakeholders are strongly encouraged to provide written submissions that:

- Are specifically tailored for the UPR;
- Contain credible and reliable information on the State under review;
- Highlight the main issues of concern and identify possible recommendations and/or best practices;
- Cover a maximum four-year time period;
- Do not contain language manifestly abusive;
- Are no longer than five pages in the case of individual submissions, to which additional documentation can be annexed for reference. Submissions by large coalitions of stakeholders can be up to ten pages.

10. Stakeholders are encouraged, while drafting their contribution, in accordance with Human Rights Council resolution 5/1 (paragraph 1), to take into consideration all human rights obligations and commitments, including those set out in the United Nations Charter, the Universal Declaration of Human Rights, Human Rights instruments to which the country under review is a party, voluntary pledges and commitments made by that country, as well as applicable international humanitarian law.

11. Stakeholders may also, if they so wish, draw attention to specific conclusions and recommendations made by international and regional human rights mechanisms, and refer to the extent of implementation. However, stakeholders should refrain from listing all treaties ratification, concluding observations and recommendations of the human rights treaty bodies and/or the special procedures of the HRC, as the latter are reflected in the UN compilation prepared by OHCHR.

12. The UPR mechanism does not provide for confidentiality and is conducted on the basis of public documents. Submissions, as originally received, will be made available on-line on OHCHR's website, including the name of the submitting party (provided they do not contain language manifestly abusive).

13. Stakeholders are encouraged to consult with one another at the national level for the preparation of the UPR submissions. Joint submissions by a large number of stakeholders are encouraged.

**For detailed technical guidance on modalities for stakeholders' submissions please refer to the information box annexed to these guidelines.**

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**C. How and when should relevant stakeholders submit information?**

14. Stakeholders' submissions should be sent to [uprsubmissions@ohchr.org](mailto:uprsubmissions@ohchr.org).
15. Deadlines for stakeholders' submissions can be found [here](#).
17. For future country reviews under the UPR, stakeholders should note that written submissions to OHCHR should be sent indicatively at least five months before the relevant session of the Working Group on UPR, to take into account UN Conference Services' requirements. The exact deadlines will be posted in due course on the website.

**V. PARTICIPATION IN THE UNIVERSAL PERIODIC REVIEW**

18. NGOs in consultative relationship with ECOSOC may attend sessions of the Working Group on the UPR.<sup>8</sup> At these sessions there is no provision for such NGOs to take the floor or submit written information;
19. NGOs in consultative relationship with ECOSOC may participate in regular sessions of the HRC, at which UPR outcomes are considered and adopted, and make brief general comments before the adoption of outcome documents by the HRC.<sup>9</sup> For information on how to be accredited to HRC sessions please visit <http://www2.ohchr.org/english/bodies/hrcouncil/>.

**VI. FOLLOW-UP TO THE UNIVERSAL PERIODIC REVIEW**

20. Relevant stakeholders may wish to contribute to the follow-up to the outcome of the UPR process, to the extent that this is appropriate:
  - (a) Follow-up action could be undertaken in cooperation with the State entities, to whom the recommendations are addressed; and
  - (b) Stakeholders may disseminate the outcome of the UPR at the national level.
21. Stakeholders are encouraged to further disseminate these guidelines and raise awareness on the UPR.

<sup>8</sup> See para. 18(c) of the Annex to [resolution 5/1](#).

<sup>9</sup> See para. 31 of the Annex to [resolution 5/1](#).

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## VII. CONTACT INFORMATION

22. For further information, please contact:

**OHCHR Civil Society Unit**

**Tel:** +41 22 917 96 56

**Fax:** +41 22 917 90 11

**E-mail:** [civilsocietyunit@ohchr.org](mailto:civilsocietyunit@ohchr.org)

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### **Technical guidelines for the submission of stakeholders' information to OHCHR**

#### **Where to submit?**

Written information for the UPR review should be sent to the following address: [uprsubmissions@ohchr.org](mailto:uprsubmissions@ohchr.org). Please avoid sending information to other OHCHR electronic addresses. Please note (a) the OHCHR secretariat will confirm electronically receipt of your message and submission; and (b) while stakeholders are discouraged to fax or mail a hardcopy of their submission to the OHCHR secretariat, they may do so in the case of repeated technical difficulties with electronic mail to: +41 22 917 90 11.

#### **Format of the written submission:**

- Each electronic submission and relevant e-mail message should refer to **one country only**. In the **e-mail message** accompanying the submitted documents kindly include:
  - In the title of the e-mail message: the name of the (main) stakeholder/NGO submitting the contribution, the kind of contribution (individual and/or joint), the name of the reviewed country and indicate the month and year of relevant UPR session, e.g., "*Women's coalition – joint UPR submission – Brazil – April 2008*";
  - In the text of the e-mail message accompanying the submission, stakeholders should indicate the details of the relevant contact person;
  - A paragraph describing the main activities of the submitting organization/coalition, as well as date of establishment, especially for those organizations which interrelate for the first time with the UN, would be also welcomed;
- Should the submission be prepared jointly, the names of all submitting stakeholders should appear at the beginning of the submission text (not in the relevant e-mail message).
- Stakeholders' submissions should not be longer than five pages, to which a more detailed and factual report maybe attached; submissions by large coalitions of stakeholders can be up to ten pages;
- Written submissions should be saved as a Word document only, i.e. not as PDF file, in Times New Roman, font 12;
- Written contributions should be submitted in UN official languages only, preferably in English, French or Spanish;
- Written submissions should be final; in principle, it will not be

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possible to accommodate revisions;

- Paragraphs and pages of each submission should be numbered;
- Stakeholders are encouraged to include in their written submissions an introductory executive summary, capturing the main points contained therein; as a way of introduction, key words may also be indicated (e.g., domestic violence);
- Written submissions should not include second-hand information (except when it clearly supports original information). Facts and details to support the identified priority issues and recommendations may be annexed for reference to the submission;
- Annexes to the submissions should NOT include pictures, maps, organizations' annual reports or reports from other organizations;
- OHCHR's summary will not refer to names of individuals mentioned in the written submission, except if they refer to emblematic cases;
- The extensive use of footnotes is discouraged;

Please note also:

- Submissions in excess of the five/ten page maximum will not be considered;
- Submissions received in a language other than the six official UN languages will not be considered;
- Submissions received after specified deadlines will not be considered; and
- Submissions containing language manifestly abusive (i.e. incitement to violence, inherently racist language, etc.) will not be considered.

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## Annex B. Human Rights Council Complaint Procedure Form

### Human Rights Council Complaint Procedure Form

- You are kindly requested to submit your complaint in writing in one of the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) and to use these languages in any future correspondence;
- Anonymous complaints are not admissible;
- It is recommended that your complaint does not exceed eight pages, excluding enclosures.
- You are kindly requested not to use abusive or insulting language.

#### I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author

Individual       Group of individuals       NGO       Other

Last name: .....

First name(s): .....

Nationality: .....

Address for correspondence on this complaint: .....

Tel and fax: (please indicate country and area code) .....

E-mail: .....

Website: .....

Submitting the complaint:

On the author's own behalf:

On behalf of other persons:  (Please specify: .....

#### II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s): .....

#### III. Facts of the complaint and nature of the alleged violation(s)

**The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.**

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).

.....

.....

.....

.....

.....

.....

#### **IV. Exhaustion of domestic remedies**

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the courts and other public authorities as well as national human rights institutions\*, the claims made, at which times, and what the outcome was:

.....

2- If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail:

.....

#### **V. Submission of communication to other human rights bodies**

1- Have you already submitted the same matter to a special procedure, a treaty body or other United Nations or similar regional complaint procedures in the field of human rights?

.....

2- If so, detail which procedure has been, or is being pursued, which claims have been made, at which times, and the current status of the complaint before this body:

.....

\* National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

### VI. Request for confidentiality

In case the communication complies with the admissibility criteria set forth in Council resolution 5/1, kindly note that it will be transmitted to the State concerned so as to obtain the views of the latter on the allegations of violations.

Please state whether you would like your identity or any specific information contained in the complaint to be kept confidential.

Request for confidentiality (*Please tick as appropriate*): Yes  No

Please indicate which information you would like to be kept confidential

Date: .....

Signature: .....

N.B. The blanks under the various sections of this form indicate where your responses are required. You should take as much space as you need to set out your responses. Your complaint should not exceed eight pages.

### VII. Checklist of supporting documents

Please provide copies (not original) of supporting documents (kindly note that these documents will not be returned) in one of the six UN official languages.

- Decisions of domestic courts and authorities on the claim made (a copy of the relevant national legislation is also helpful):
- Complaints sent to any other procedure mentioned in section V (and any decisions taken under that procedure):
- Any other evidence or supporting documents deemed necessary:

### VIII. Where to send your communications?

Office of the United Nations High Commissioner for Human Rights  
 Human Rights Council Branch-Complaint Procedure Unit  
 OHCHR- Palais Wilson  
 United Nations Office at Geneva  
 CH-1211 Geneva 10, Switzerland  
 Fax: (+41 22) 917 90 11  
 E-mail: [CP@ohchr.org](mailto:CP@ohchr.org)  
 Website: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>

## Annex C. Complaint Procedure

### VIII. SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION



#### Complaint procedures at a glance

##### *What are they?*

Human rights complaint procedures are mechanisms for bringing cases of alleged human rights violations to the attention of the United Nations. There are three such mechanisms:

- Individual complaints under the international human rights treaties (petitions);
- Individual communications under the **special procedures** of the **Human Rights Council**; and
- The **complaint procedure** of the Human Rights Council.

##### *How do they work?*

Each procedure has its own requirements, advantages and limitations.

These need to be carefully considered before deciding which one(s) to use:

- Individual complaints of human rights violations can be submitted under five of the core **international human rights treaties**;
- Individual communications operate under the thematic and geographic mandates of the special procedures of the Human Rights Council; and
- The Council's complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

##### *How to access and work with the complaint procedures*

Any civil society actor, with due regard for the specific requirements of each procedure, is able to access these mechanisms, regardless of status with the United Nations. Complaints under each of these procedures can be submitted by the individual who has suffered the alleged human rights violation or on that person's behalf by third parties, for example, by a non-governmental organization (NGO). Civil society actors can often act as a conduit for individuals seeking redress from human rights abuses by preparing, submitting or lodging a complaint on



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The Handbook is available in digital format on the OHCHR website at:

<http://www.ohchr.org/civilsocietyhandbook/>

There you will find the Handbook's chapters available for download, as well as links to all the references contained in the publication.

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their behalf. However, anyone submitting a complaint on behalf of an individual should ensure that they obtain the

consent of that individual and that the individual is aware of the implications of making a complaint. The requirements for each

procedure should be carefully followed to ensure that the complaint is admissible.



### Key contacts for the human rights complaint mechanisms

#### Complaints under the human rights treaties

(To the **Human Rights Committee**, the **Committee against Torture**, the **Committee on the Elimination of Discrimination against Women**, the **Committee on the Elimination of Racial Discrimination** or the **Committee on the Rights of Persons with Disabilities**)

Petitions Team

Office of the United Nations High Commissioner for Human Rights

Palais des Nations

8-14, avenue de la Paix

CH-1211 Geneva 10 - Switzerland

Fax: +41 (0)22 917 90 22

E-mail: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)

#### Communications under special procedures

Special Procedures Division

Office of the United Nations High Commissioner for Human Rights

Palais des Nations

8-14, avenue de la Paix

CH-1211 Geneva 10 - Switzerland

Fax: +41 (0)22 917 90 06

E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

#### Human Rights Council's complaint procedure

Human Rights Council Branch (complaint procedure)

Office of the United Nations High Commissioner for Human Rights

Palais des Nations

8-14, avenue de la Paix

CH-1211 Geneva 10 - Switzerland

Fax: +41 (0)22 917 90 11

E-mail: [CP@ohchr.org](mailto:CP@ohchr.org)

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

### What are the complaint procedures?

The United Nations system focuses largely on the obligations of States and operates at the level of Governments. However, its human rights system also provides for different procedures that are open to individuals and groups seeking United Nations action on a human rights situation of concern to them. These are called human rights complaint procedures.

Through these procedures, individuals may bring a human rights concern to the attention of the United Nations; thousands of people around the world do so every year.

Human rights complaints may be submitted under these three mechanisms:

- The **international human rights treaties** (petitions);
- The **special procedures mechanisms** of the **Human Rights Council**; and
- The **complaint procedure** of the Human Rights Council.

Under certain circumstances, these different procedures may be complementary and more than one may be used.

### How do the complaint procedures work?

It is important to consider carefully which complaint procedure is best suited to a particular case. Each has its own strengths, specific requirements and limitations. They need to be considered in the interests of the victim(s) and of the individual(s) or organization(s) presenting the complaint.

#### A. Individual complaints under the international human rights treaties

Seven international human rights treaties allow for individual complaints to human rights treaty bodies:

- The **International Covenant on Civil and Political Rights** under its **First Optional Protocol**;
- The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** under its article 22;
- The **Convention on the Elimination of All Forms of Discrimination against Women** under its **Optional Protocol** (this treaty also allows communications from groups of individuals);
- The **International Convention on the Elimination of All Forms of Racial Discrimination** under its article 14 (this treaty also allows communications from groups of individuals);

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- The **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** under its article 77. However, this provision will come into force only after 10 States parties have made a declaration to that effect.<sup>69</sup>
- The **Convention on the Rights of Persons with Disabilities** under its **Optional Protocol** (this treaty also allows communications from groups of individuals); and
- The **International Convention for the Protection of All Persons from Enforced Disappearance** under its article 31. By September 2008 this Convention had not yet entered into force.

Upon its entry into force, the Optional Protocol to the **International Covenant on Economic, Social and Cultural Rights**<sup>70</sup> will also allow for individual complaints.

### Strengths

- An important advantage of submitting a complaint to a treaty body is that, once a State party has made the relevant declaration under the treaty, it **should comply with its obligations** under that treaty, including the obligation to provide an effective remedy for breaches of the treaty. The relevant human rights treaty body, through individual complaints, authoritatively determines whether there has been a violation, and the State concerned has an obligation to give effect to the treaty body's finding(s);
- Human rights treaty bodies can issue interim measures in urgent cases to preserve a situation until they make a final decision on the matter. This interim measure will stay in place until the decision is made;
- Decisions of human rights treaty bodies can go beyond the circumstances of the individual case and provide proactive guidelines to prevent a similar violation occurring in the future;
- Human rights treaty bodies can also consider complaints that are being or have been addressed by a special procedure.

### Specific requirements and limitations

- The complainant's case must fall within the scope of application of one of the treaties that allow for individual complaints;
- The State in question must be a party to the treaty and must have ratified the relevant optional protocol or accepted the competence of the specific human rights treaty body to accept complaints;
- When submitting an allegation to a human rights treaty body, a number of requirements must be met, including the consent or authorization of the victim. If any of these requirements are not met or are missing, the complaint may not be considered;

<sup>69</sup> By September 2008 only one State had made such a declaration.

<sup>70</sup> The Optional Protocol was adopted by the Council on 18 June 2008 and is expected to be adopted by the General Assembly later in 2008.

## SUBMITTING A COMPLAINT OF ALLEGED HUMAN RIGHTS VIOLATION

- Under the International Convention on the Elimination of All Forms of Racial Discrimination, complaints must be lodged within six months of the final decision by a national authority in a given case;
- The complainant must have exhausted all available and effective domestic remedies before sending a complaint to a treaty body—a remedy is considered effective if it offers a reasonable prospect of redress for the complainant;
- It takes two to three years, on average, for a final decision to be taken on a complaint;
- Generally, a complaint addressed to a human rights treaty body does not relate to a widespread pattern of human rights violations;
- Human rights treaty bodies may not consider a case that is already being considered by another international or regional adjudicative complaint procedure.<sup>71</sup>



For detailed information on the **human rights treaty bodies**, please refer to **chapter IV (Human rights treaty bodies)** of this *Handbook*.

### B. Communications under special procedures

A number of the special procedures mechanisms allow for allegations to be made concerning either individual cases or a more general pattern of human rights abuse. Individuals, or others acting on an individual's behalf, can submit individual cases to special procedures mandate-holders, if the mandate allows for this. Civil society actors often support individuals seeking protection from human rights abuses.

#### Strengths

- Individual communications under special procedures are a procedure that may be used for individual cases as well as for a more general pattern of violations;
- They can be a useful tool in urgent cases as they allow for urgent or preventive (known as **urgent appeals**);
- Cases may be brought **regardless of the State** in which they occur and of whether that State has ratified any of the human rights treaties;
- It is not necessary to have exhausted all domestic remedies before using the procedure;
- The communication is not required to be made by the victim, although the source must be reliable; and

### Limitations

- There must be a special procedure in place covering that specific human rights issue or that specific country (not all special procedures mandate-holders can act on individual cases);
- Special procedures are not legally binding mechanisms: it is at each State's discretion to comply with the recommendations of special procedures mandate-holders; and
- Procedures vary depending on the mandate.



For detailed information on the **special procedures**, please refer to **chapter VI (Special procedures)** of this *Handbook*.

### C. Human Rights Council's complaint procedure

Any individual or group claiming to be the victim of human rights violations may submit a complaint under this procedure, as may any other person or group with direct and reliable knowledge of such violations. The Council's complaint procedure is the only universal complaint procedure covering all human rights and all fundamental freedoms in all States.

Communications under it are not tied to the acceptance of treaty obligations by the country concerned or the existence of a special procedures mandate. The complaint procedure deals with consistent patterns of gross human rights violations in a State. It neither compensates alleged victims, nor does it seek a remedy for individual cases.

### Strengths

- The procedure can deal with **violations of all human rights and fundamental freedoms**; a State does not need to be a party to a treaty for a complaint against it to be submitted under this procedure;
- Complaints may be brought **against any State**;
- Complaints may be submitted by the victim or anyone acting on the victim's behalf and does not necessarily require the victim's written authorization;
- Complainants (authors of communications) are informed of the decisions taken at the various key stages of the process; and
- The admissibility criteria are generally less strict than for other complaints mechanisms.

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

### Possible limitations

- The process can be lengthy, since the complaint goes through several stages of consideration, and therefore may not be suitable for urgent cases;
- The complainant must have exhausted all available and effective domestic remedies before sending information under this procedure;
- There are no provisions for urgent interim measures of protection;
- Communications must generally refer to a consistent pattern of human rights violations, in other words affecting a larger number of people, rather than individual cases;
- Due to its confidentiality, this procedure may not draw public attention to the human rights situation in a given State; and
- Cases that appear to reveal a consistent pattern of gross violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional human rights complaint procedure are not admissible under this procedure.



For more information on the **complaint procedure**, please refer to **chapter V (Human Rights Council)** of this *Handbook*.

### How to access and work with the complaint procedures

Any civil society actor, with due regard for the specific requirements of each procedure, is able to access the complaint procedures. Complaints under each of these procedures can be submitted by an individual who has suffered an alleged human rights violation or by third parties on that person's behalf, for example, by an NGO.

Civil society actors often act as a conduit for individuals seeking redress from human rights abuses by preparing, submitting or lodging a complaint on their behalf. However, anyone submitting a complaint on behalf of an individual should ensure that they obtain the consent of that individual and that the individual is aware of the implications of making a complaint. For example, when information is submitted to the special procedures, the mandate-holder sends a communication to the State regarding the case, which will ultimately be included in a public report. When a complaint is submitted to a human rights treaty body, the identity of the individual will be disclosed to the Government. It is therefore fundamental for the alleged victim to be familiar with how each of the complaint procedures operates.

The requirements for each procedure should also be carefully followed to ensure that the complaint is admissible.

## A. Individual complaints under the international human rights treaties

Complaints may be brought by individuals or by duly authorized third parties, for example lawyers, non-governmental organizations (NGOs) or professional groups, on behalf of individuals who claim to be victims of human rights violations. This section examines the requirements and the main elements of individual complaints.

### Requirements

#### 1. State party ratification

A complaint of a human rights violation under a human rights treaty may be made against a State if:

- The State is a party to the treaty in question, having ratified or otherwise accepted it; and
- The State party has recognized the competence of the human rights treaty body established under that treaty to consider such complaints. Depending on the treaty, this requires the State either to have become a party to the relevant optional protocol or to have made the necessary declaration under the treaty.

It should be noted that a number of States parties have entered substantive reservations or declarations that may limit the scope of the human rights obligations that they assume under the treaties. These should be reviewed when determining whether or not a complaint can be made under a certain section of a treaty.<sup>72</sup>

#### 2. Individual violations

Individual complaints under treaty bodies may be used only for **cases of human rights violations concerning one or more specific individuals**, and are not usually suited for general patterns of human rights violations where individuals are not identified.

#### 3. Domestic remedies

Individual complaints under international human rights treaties can be submitted only if **effective domestic remedies have been exhausted**, i.e., the case/complaint has completed the various steps of the domestic court system or through any administrative instances capable of providing an available and effective remedy within a reasonable period of time. This rule does not apply if domestic remedies are **ineffective or unduly prolonged**. What constitutes “undue prolongation” cannot be determined generally and must be assessed case by case.

<sup>72</sup> To learn more about both the status of ratification and State party declarations/reservations to each treaty and the relevant optional protocols [click here](#).

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

### 4. Bringing a complaint on behalf of the victim

A person or organization can bring a complaint on behalf of another person provided the individual victim has given **written consent** in the form of a “power of attorney” or an “authority to act”.<sup>73</sup>

### 5. Other complaint processes

If a case **is already being considered by the adjudicative complaint procedures of another United Nations body, international or regional organization**, it generally cannot be considered by a United Nations treaty body. If the case has previously been considered and rejected by the **Inter-American Court of Human Rights** or the **European Court of Human Rights**, then the same complaint may sometimes be eligible for consideration by a treaty body. Cases submitted under a special procedures mandate can also be submitted to a treaty body.

### 6. Form of the complaint

While complainants are encouraged to use model complaint forms (see annexes I and II to this chapter), any form of correspondence including the relevant information is in principle sufficient. This should be submitted in one of the working languages of the relevant human rights treaty body.<sup>74</sup>

<sup>73</sup> Such consent is not necessary if there are strong grounds for believing that it is impossible to obtain under the circumstances.

<sup>74</sup> These languages are usually Arabic, Chinese, English, French, Russian and Spanish, but complainants are advised to check the OHCHR website to confirm the working languages of each body.



### What information should individual complaints under treaty bodies include?

- **Basic personal information** on the person whose human rights have allegedly been violated (name, nationality, date of birth);
- Name of the **State party** against which the complaint is directed;
- If the complaint is made on behalf of another individual, **proof of** that person's **consent** or authorization ("power of attorney", in hard copy) or, alternatively, a justification of why such consent or authorization is unavailable or cannot be provided;
- A thorough **account of the facts** on which the complaint is based, clearly presented in chronological order;
- Details of the **steps taken to exhaust all available judicial remedies in the local courts, as well as any effective administrative remedies** which might be available in the State concerned;
- Details of **other submissions of the case or the facts involved** to another means of international investigation or settlement, if any;
- Account of **arguments as to why the facts in the case amount to a violation** of the human rights contained in the treaty whose provisions are invoked. It is useful for the **relevant articles of the treaty** to be identified;
- **All documents relevant** to the claims and arguments (court decisions, etc.);
- Copies of **relevant national laws**, where available;

As a general rule, communications containing abusive language are not considered.

#### 7. Time limits

The International Convention on the Elimination of All Forms of Racial Discrimination is the only human rights treaty that has set a formal deadline for the filing of complaints. Nonetheless, complaints should ideally be submitted **as soon as possible** after the alleged violation has occurred and the domestic remedies have been exhausted. Delayed submission may make it difficult for the State party to respond properly and for the treaty body to evaluate the factual background thoroughly. Complaints concerning violations which occurred prior to the entry into force of the complaint mechanism for the relevant State party will not be examined (except if they have a continuous effect in violation of the treaty). Complaints submitted under the International Convention on the Elimination of All Forms of Racial Discrimination must be submitted within **six months** of the final decision by a national authority in the case.

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

### 8. Urgent action

Each committee may take urgent action by way of interim measures if irreparable harm would otherwise be suffered before a given case is examined in the usual course. Typically, such initiatives are undertaken to prevent actions that cannot later be undone, for example the execution of a death sentence or the deportation of an individual facing a risk of torture. **Individuals or organizations requesting a human rights treaty body to consider undertaking interim measures are encouraged to clearly state this in their complaint.**

### 9. Sensitive matters

If there are **sensitive matters** of a private or personal nature that emerge in the complaint, it is possible to request the committee to suppress the victim's name in its final decision so that his/her identity does not become public.

#### Elements of the procedures

If the complaint contains the essential elements outlined above, the case is formally listed for consideration (that is, **registered**) by the relevant human rights treaty body.

The case will then be transmitted to the State party concerned to give it an opportunity to comment. Once the State party replies, the complainant is offered an opportunity to comment on the State's response. At that point, the case is ready for a decision by the human rights treaty body. If the State does not reply, despite one or several reminders, the human rights treaty body will take a decision on the case giving due weight to the claims formulated by the complainant.

The two major stages of the human rights treaty body review process are known as the "admissibility" stage and the "merits" stage. At the admissibility stage, the treaty body considers whether the complaint meets the requirements of the procedure. If it determines the case to be admissible, it considers the merits of the complaint. Although these stages are usually considered together, they may be split at the request of the State party. If a case fails at the admissibility stage, the merits of the case may not be considered.

The human rights treaty bodies consider each case in closed meetings. Once a human rights treaty body has taken a decision on a case, the decision is transmitted to the complainant and the State simultaneously. If a human rights treaty body decides that a complainant has indeed been the victim of a human rights violation by a State party under the relevant treaty, it generally identifies the remedy that should be provided and invites the State party to supply follow-up information within a specific period of time (usually six months) on the steps it has taken to give effect to the human rights treaty body's findings.

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The text of any final decision on the merits of a case or of a decision of inadmissibility is posted on the OHCHR website as part of the human rights treaty body's jurisprudence.



### Where to send an individual complaint under the international human rights treaties

Complaints should be sent to:

Petitions Team

Office of the United Nations High Commissioner for Human Rights

Palais des Nations

8-14, avenue de la Paix

CH-1211 Geneva 10 - Switzerland

Fax: +41 (0)22 917 90 22 (particularly for urgent matters, should include all relevant documents in hard copy)

E-mail: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)

**Always specify which human rights treaty body you are writing to.**

## B. Communications under special procedures

This mechanism allows for communications to be made concerning either individual cases or more general patterns of human rights abuses. Any individual or group or an organization acting on an individual's behalf can submit cases to special procedures mandate-holders.

Civil society actors can often act as a conduit for individuals seeking protection from human rights abuses. Individuals or organizations wishing to submit a case under any of the special procedures mandates should first check whether there is a country or thematic mandate relevant to their case. In addition, they should carefully read the specific criteria of the mandate that must be fulfilled before the communication can be accepted. In particular, the **Working Group on Arbitrary Detention** and the **Working Group on Enforced or Involuntary Disappearances** have specific criteria that differ from those of other mandates.

On receipt of an individual case, the decision to intervene is at the discretion of the special procedure mandate-holder. It will depend on the criteria that the mandate-holder has established and should be in line with the **Code of Conduct for Special Procedures Mandate-holders**. The criteria will generally relate to:

- The reliability of the source, which should not exclusively be based on media reports;
- The credibility of the information received, which should not be politically motivated;

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

- The detail provided; and
- The scope of the mandate itself.

To facilitate the examination of reported violations, **questionnaires** relating to several mandates are available online for persons wishing to report alleged violations (see below). It should, however, be noted that communications from individuals or other authors are considered even when they are not submitted in the form of a questionnaire. Authors of communications are encouraged to send regular updates of the information they have submitted.



### What information should individual complaints under special procedures include?

- Identification of the alleged **victim(s)**;
- Identification of the alleged **perpetrators** of the violation;
- Identification of the **person(s) or organization(s) submitting the communication** (this information will be kept confidential);
- **Date and place** of the incident; and
- A **detailed description of the circumstances** of the alleged violation.

#### Note:

- As a general rule, communications that contain abusive language are **not** considered;
- Communications should be **clear and concise**;
- Always specify **which special procedure mechanism** the complaint is addressed to;
- Always **consult the requirements established by each mandate** for the submission of individual complaints; and
- Communications can be written in English, French or Spanish.



### Where to send an individual complaint under special procedures

Special Procedures Division  
Office of the United Nations High Commissioner for Human Rights  
Palais des Nations  
8–14, avenue de la Paix  
CH–1211 Geneva 10 - Switzerland  
Fax: +41 (0)22 917 90 06  
E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

Please specify which special procedure mechanism the complaint is addressed to in the subject line of the e-mail or fax or on the envelope. Note that some special procedures mandates have established specific requirements that the complaints must meet. Details of these requirements can be found on the OHCHR website, under each mandate.

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On the basis of credible and reliable information received from victims of alleged human rights abuses, special procedures mandate-holders can send **communications to Governments**. These are transmitted through OHCHR and may take the form of an **urgent appeal**, if a serious violation appears ongoing or imminent, or a **letter of allegation**, if a violation has allegedly already occurred. Through communications, the mandate-holder asks the Government concerned for clarification on a specific case and/or adequate remedial measures. Mandate-holders can also request Governments to communicate the results of their investigation and actions.

Depending on the response received, they may decide to further inquire or make specific recommendations. In some instances they can also decide to issue a public statement on the case.

Under the rules of the Human Rights Council, all special procedures are required to **report** on their activities at its annual sessions. Communications sent and received are usually confidential and remain so until the annual report of the relevant special procedure is made public, unless the mandate-holder decides to issue a press statement.<sup>75</sup>

Please note that the alleged victims are named in the reports of special procedures mandate-holders, except in the case of children or specific circumstances. Given the public nature of the reports of special procedures mechanisms, it is important that individuals or organizations acting on behalf of victims of human rights violations ensure that the victims are aware that their case is being transmitted to the special procedures mechanisms, that their names may be communicated to the authorities concerned, and that their names (or initials) may appear in the public report of the relevant special procedure.

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<sup>75</sup> In addition to annual reports, some mandate-holders issue other documentation that helps to explain their work and the scope of their mandates. In particular, the Working Group on Arbitrary Detention issues "deliberations" on general matters and "opinions" on individual complaints; and the Working Group on Enforced or Involuntary Disappearances issues "general comments" on the Declaration on the Protection of All Persons from Enforced Disappearance.

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION



**Standard questionnaires** are available for reporting alleged violations under the following mandates:

- **Working Group on Arbitrary Detention**
- **Working Group on Enforced or Involuntary Disappearances**
- **Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination**
- **Special Rapporteur on extrajudicial, summary or arbitrary executions**
- **Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**
- **Special Rapporteur on the human rights of migrants**
- **Special Rapporteur on the sale of children, child prostitution and child pornography**
- **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**
- **Special Rapporteur on trafficking in persons, especially in women and children**
- **Special Rapporteur on violence against women, its causes and consequences; and**
- **Special Rapporteur on the situation of human rights defenders.**

However, communications from individuals and other sources will be considered even when they are not submitted in the form of a questionnaire.

### C. The Human Rights Council's complaint procedure

Under the Human Rights Council's complaint procedure, communications may be submitted by any individual or group claiming to be a victim of human rights violations or having direct, reliable knowledge of such violations. The important elements of this procedure are set out below.



#### What information should complaints under the Human Rights Council's complaint procedure include?

- Identification of the **person(s) or organization(s) submitting the communication** (this information will be kept confidential, if requested). Anonymous complaints are not admissible;
- **Description of the relevant facts** in as much detail as possible, providing names of alleged **victims, dates, locations and other evidence**;
- Purpose of the complaint and the **rights allegedly violated**;
- **Explanation** of how the case may reveal a **pattern of gross and reliably attested human rights violations** rather than individual violations; and
- Details of how **domestic remedies have been exhausted**, or explanation of how such remedies would be ineffective or unreasonably prolonged.

#### Note:

- All complaints must be in writing. Please note that it is not sufficient to rely on mass media reports. If you intend to submit a human rights report as evidence, attach a cover letter to identify yourself, explain the case you want to make and that you wish the complaint to be dealt with under the Human Rights Council's complaint procedure.
- It is advisable to limit the complaint to 10-15 pages. Additional information may be submitted at a later stage.
- Complaints can be written in English, French, Russian or Spanish. Documents in other languages should be translated or summarized in one of these languages; and
- Communications that contain language deemed abusive or insulting will not be considered.

## VIII

The detailed modalities and procedures of this complaint mechanism are laid out in Council **resolution 5/1**. The information provided in this section is based on the provisions of that resolution. It is expected that these initial provisions and working methods, in particular in relation to feedback-sharing with complainants through the various stages of the process, will be further developed.

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

The stages of the complaint procedure are:

### **Stage 1: Initial screening**

The OHCHR secretariat, together with the Chairperson of the **Working Group on Communications**, screens all communications (complaints) as they arrive on the basis of the admissibility criteria, and discards those found to be manifestly ill-founded or anonymous. If a communication is admitted to the next stage of the procedure, the author receives a written acknowledgement and the communication is sent to the Government concerned for reply.

### **Stage 2: Working Group on Communications**

The **Working Group on Communications** is composed of five appointed members of the **Human Rights Council Advisory Committee** and is mandated to meet at least twice a year for five days each session. This Working Group examines complaints that have passed the initial screening stage and any replies received from Governments with a view to bringing to the attention of the Working Group on Situations any particular situation appearing to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

### **Stage 3: Working Group on Situations**

The **Working Group on Situations** is composed of five members of the Human Rights Council, who serve in their personal capacity, and is mandated to meet at least twice a year, for five days each session, to consider situations referred to it by the Working Group on Communications. It assesses the cases referred to it and produces a report for the Human Rights Council with specific recommendations on the action to be taken with regard to any situation that reveals a consistent pattern of gross violations. Alternatively, it may decide to keep a situation under review or to dismiss a case.



For more information on the **Human Rights Council Advisory Committee**, please refer to **chapter V (Human Rights Council)** of this *Handbook*.

### **Stage 4: Human Rights Council**

The Human Rights Council considers, in plenary, situations brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year. It examines the reports of the Working Group on Situations referred to it in a confidential manner, unless it decides otherwise. Based on its consideration of a situation the Council may take action, usually in the form of a resolution or decision. It may decide on the following measures:

- To discontinue considering the situation when further consideration or action is not warranted;

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- To keep the situation under review and request the State concerned to provide further information within a reasonable period of time;
- To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to it;
- To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;
- To recommend that OHCHR should provide technical cooperation, capacity-building assistance or advisory services to the State concerned.

All material provided by individuals and Governments regarding a situation under consideration, as well as the decisions taken at the various stages of the procedure, remains **confidential**. This also applies to situations that have been discontinued.



**Where to send a complaint under the Human Rights Council's complaint procedure**

**Human Rights Council Branch (complaint procedure)**

Office of the United Nations High Commissioner for Human Rights

Palais des Nations

8-14, avenue de la Paix

CH-1211 Geneva 10 - Switzerland

Fax: +41 (0)22 917 90 11

E-mail: [CP@ohchr.org](mailto:CP@ohchr.org)

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

### Annex I - Model complaint form for communications under:

- The **Optional Protocol to the International Covenant on Civil and Political Rights**
- The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**; or
- The **International Convention on the Elimination of All Forms of Racial Discrimination**

#### Please indicate which of the above procedures you are invoking

Date: \_\_\_\_\_

#### I. Information on the complainant:

- Family name
- First name(s)
- Nationality
- Date and place of birth
- Address for correspondence on this complaint
- Indicate whether you are submitting the communication:
  - On your own behalf
  - On behalf of another person.

*[If the complaint is being submitted on behalf of another person:]*

- Please provide the following personal details of that other person:
  - Family name
  - First name(s)
  - Nationality
  - Date and place of birth
  - Address or current whereabouts.

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint

or

If you are not so authorized, please explain the nature of your relationship with that person and detail why you consider it appropriate to bring this complaint on his or her behalf.

#### II. State concerned/articles violated

- Name of the State that is either a party to the Optional Protocol (in the case of a complaint to the Human Rights Committee) or has made the relevant declaration (in the case of complaints to the Committee against Torture or the Committee on the Elimination of Racial Discrimination);
- Articles of the Covenant or Convention alleged to have been violated.



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### III. Exhaustion of domestic remedies/application to other international procedures

- Steps taken by or on behalf of the alleged victim(s) to obtain redress within the State concerned for the alleged violation—detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes;
- If you have not exhausted these remedies because their application would be unduly prolonged, they would not be effective, they are not available to you, or for any other reason, please explain your reasons in detail;
- Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g., the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?;
- If so, detail which procedure(s) have been or are being pursued, which claims you have made, at which times, and with which outcomes.

### IV. Facts of the complaint

- Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters that may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights;
- Author's signature.

### V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization);
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful);
- Complaints to and decisions by any other procedure of international investigation or settlement;
- Any documentation or other corroborating evidence you possess that substantiates your description in part IV (above) of the facts of your claim and/or your argument that the facts described amount to a violation of your rights.

**If you do not enclose this information and it needs to be sought specifically from you, or if accompanying documentation is not provided in the working languages of the secretariat, the consideration of your complaint may be delayed.**

## SUBMITTING A COMPLAINT ON AN ALLEGED HUMAN RIGHTS VIOLATION

### Annex II - Complaint guidelines for communications under:

- The **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women**

#### 1. Information concerning the author(s) of the communication

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Postal address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail
- Indicate whether you are submitting the communication as:
  - Alleged victim(s); if there is a group of alleged victims, provide basic information about each individual.
  - On behalf of the alleged victim(s); provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent.

#### 2. Information concerning the alleged victim(s) (if other than the author)

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Postal address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail.

#### 3. Information on the State party concerned

- Name of the State party (country).

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#### 4. Nature of the alleged violation(s)

Provide detailed information to substantiate your claim, including:

- Description of alleged violation(s) and alleged perpetrator(s)
- Date(s)
- Place(s)
- Provisions of the Convention on the Elimination of All Forms of Discrimination against Women that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

#### 5. Steps taken to exhaust domestic remedies

Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:

- Type(s) of remedy sought
- Date(s)
- Place(s)
- Who initiated the action
- Which authority or body was addressed
- Name of court hearing the case (if any)
- If domestic remedies have not been exhausted, explain why

**Note:** Enclose copies of all relevant documentation.

#### 6. Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If so, explain:

- Type of procedure(s)
- Date(s)
- Place(s)
- Results (if any)

**Note:** Enclose copies of all relevant documentation.

#### 7. Date and signature

Date/place: \_\_\_\_\_

Signature of author(s) and/or victim(s): \_\_\_\_\_

#### 8. List of documents attached (do *not* send originals, only copies)

## Annex D. Directory of Special Procedures and Mandate Holders

JULY

2020



# DIRECTORY OF SPECIAL PROCEDURES MANDATE HOLDERS



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*The Special Rapporteurs (SR), Independent Experts (IE) and members of the Working Groups (WG) serve in their personal capacities and undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith. They are not United Nations staff members and do not receive financial remunerations.*

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For media enquiries

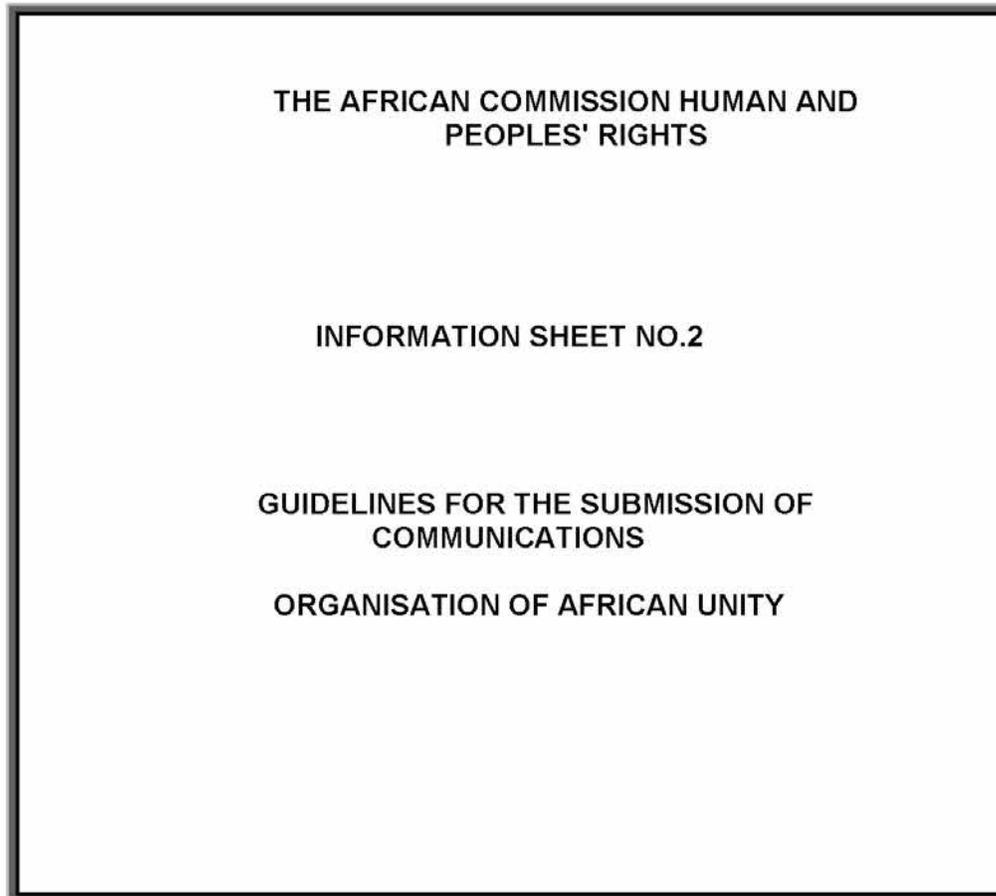
E-mail: [pressinfo@ohchr.org](mailto:pressinfo@ohchr.org)

## Annex E. Human Rights Treaties

Treaty	Date of Adoption
Convention on the Elimination of Mercenarism in Africa	July 3, 1977
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	September 10, 1969
<a href="#">African Charter on Human and Peoples' Rights</a>	June 01, 1981
<a href="#">Agreement for the Establishment of the African Rehabilitation Institute (ARI)</a>	July 17, 1985
African Charter on the Rights and Welfare of the Child	July 1, 1990
The African Nuclear Weapon-Free Zone Treaty (Pelindaba Treaty)	April 11, 1996
<a href="#">Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights</a>	June 10, 1998
OAU Convention on the Prevention and Combating of Terrorism	July 1, 1999
African Union Convention on Preventing and Combating Corruption	July 1, 2003
<a href="#">Protocol of the Court of Justice of the African Union</a>	July 01, 2003
Protocol to the African Charter on Human and Peoples' rights on the rights of women in Africa	July 1, 2003
Protocol to the OAU Convention on the Prevention and Combating of Terrorism	July 1, 2004

African Charter on Democracy, Election and Governance	January 30, 2007
<a href="#">Protocol on the Statute of the African Court of Justice and Human Rights</a>	July 01, 2008
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	October 23, 2009
African Union Convention on Cyber Security and Personal Data Protection	June 27, 2014
<a href="#">Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights</a>	June 27, 2014
<a href="#">Statute on the Establishment of Legal Aid Fund for the African Union Human Rights Organs</a>	January 30, 2016
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons	January 31, 2016
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa	January 29, 2018

## Annex F. ACHPR Infosheet Communications



This Information Sheet is published by the Secretariat of the African Commission on human and Peoples' Rights: Its purpose is to inform people or groups of 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, conditions for submitting communications, emergency communications, who can submit a communication, how many violations per communication, legal representation and a standard format for the submission of communications.

This document which is distributed free of charge explains in clear and simple language how to submit a complaint (communication or petition) to the African commission.

The booklet is also available in French. It may be reproduced for dissemination purpose so long as no changes are made to its content and provide that the African commission is mentioned as the source.

The publication and distribution of this document has been made possible through funding from the European Union.

### **Introduction**

Most people who suffer human rights abuses sometimes do not know that their rights have been violated, and even if they know, they do 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 attend to 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 of State party alleging a violation, should first of all ascertain whether the State committing the violating 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 OAU for adoption. The decision of the Assembly is final.

### **The Rights and Freedoms protected 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 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 (be it ethnic or national) 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. Ordinary citizens, a group of 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 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, should the complainant opt to be present at any session of the Commission, the Commission will grant him or her audience.

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 National Bar Association.

### **Conditions for submitting a communication<sup>1</sup>**

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:

- 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 OAU and with the present Charter.
- the communication must not be written in insulting language directed against the state or the OAU;
- 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 has 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 in order to be valid**

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

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<sup>1</sup> See Information fact Sheet No. 3 for a detailed explanation of these conditions.

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 communication should indicate the reasons it was not possible to do so.

The complaint 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 failing to meet these requirements will be notified and where necessary, asked to furnish the commission with further information.

### **Emergency Communications**

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 guidelines 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) Guidelines on how to submit communication under article 48 and 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 amicable 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 OAU system).
7. Complaints submitted to the Secretary General of the OAU and to the accused State. These complaint letters should be accompanied by any response from these two sources.

#### **(B) Guidelines on how to submit a communication pursuant to article 5 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).
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).

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## ENDNOTES

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**T**he United Nations (UN) reports that “despite all the positive developments in international human rights standard-setting, Indigenous Peoples continue to face serious human rights abuses on a day-to-day basis.” This is concurred by former UN Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP) Victoria Tauli-Corpuz who expressed concern on the drastic increase in attacks and acts of violence against, criminalization of and threats aimed at Indigenous Peoples, particularly those arising in the context of large-scale projects.