

HUMAN RIGHTS COUNCIL

COMPLAINT PROCEDURE



**UNITED NATIONS
HUMAN RIGHTS COUNCIL**



WHAT IS THE COMPLAINT PROCEDURE OF THE HUMAN RIGHTS COUNCIL?

The complaint procedure of the Human Rights Council addresses consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances (Human Rights Council resolution 5/1 of 18 June 2007). It is based on the former Commission of Human Rights' 1503 procedure which has been modified to ensure that the procedure is impartial, objective, efficient, victims oriented and conducted in a timely manner.

Two distinct working groups – the Working Group on Communications and the Working Group on Situations – are responsible, respectively, for examining written communications and bringing consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms to the attention of the Council. This complaint procedure is the only universal complaint procedure covering all human rights and all fundamental freedoms in all States Members of the United Nations. This procedure is confidential, with a view to enhance cooperation with the State concerned.

ADVANTAGES OF SUBMITTING A COMPLAINT TO THE COMPLAINT PROCEDURE OF THE HUMAN RIGHTS COUNCIL

- A complaint can be submitted against any country irrespective of whether the country has ratified any particular treaty or made reservations under a particular instrument.
- It is possible for a complaint to reach and be considered by the highest level of the United Nations human rights machinery, the Human Rights Council.
- The fact that the procedure is confidential enhances State cooperation.

WHAT ARE THE DIFFERENCES BETWEEN THE 1503 PROCEDURE AND THE PROCEDURE UNDER COUNCIL RESOLUTION 5/1?

As practice has shown, in substance the complaint procedure is very similar to the former 1503 procedure, and the new features listed below consist of mainly technicalities in the workings of the procedure:

- **GREATER OBJECTIVITY AND TRANSPARENCY** in that the Chairperson of the Working Group on Communications provides the members of the Working Group (composed of five independent experts designated by the Advisory Committee from among its members and geographically representative of the five regional groups) with the list of all communications rejected after initial screening of all communications and the grounds for rejection.

- **CASES BEING PROCESSED IN A TIMELY MANNER** in that the two Working Groups meet twice a year each for a one-week session, instead of once a year each for a two-week session. The Council may therefore consider cases brought to its attention by the Working Group on Situations (composed of five members appointed by the regional groups from among the States members of the Council) as frequently as needed.
- **GREATER TRANSPARENCY AND VICTIMS-ORIENTED** in that the author and the State concerned are informed of the proceedings at key stages. Both Working Groups, within the scope of their respective mandates, decide on how to translate this victims-oriented approach into concrete procedures and methods of work. Accordingly, both Working Groups can decide to contact an author of a communication to request further information, including by asking the same questions to the author and the State concerned.
- **GREATER COOPERATION AND DIALOGUE** with the State concerned in that one new measure that the Council may take in respect of a particular case includes recommending to OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the State concerned.
- **EXHAUSTION OF DOMESTIC REMEDIES** can also include proceedings before national human rights institutions (NHRIs), if they are operating in accordance with the Paris Principles and have a quasi-judicial competence.

The new procedure retained its confidential nature, with a view to enhancing cooperation with the State concerned. The Council can decide to discontinue reviewing a matter under the confidential procedure and take it up in public consideration.



WHAT TYPES OF COMPLAINTS ARE ADMISSIBLE UNDER THE COMPLAINT PROCEDURE OF THE HRC?

In order to be admissible under the Human Rights Council complaint procedure, a complaint has to meet the following criteria:

- It shall be in writing and has to be submitted in one of the six UN official languages (Arabic, Chinese, English, French, Russian and Spanish);
- It shall contain a description of the relevant facts (including names of alleged victims, dates, location and other evidence), with as much detail as possible, and shall not exceed 15 pages;
- It must not be manifestly politically motivated;
- It must not be exclusively based on reports disseminated by mass media;
- It is not being already 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;
- It must not use a language that is abusive or insulting;
- The complaint procedure is not mandated to seek remedies in individual cases or to provide compensation to alleged victims.



WHAT EVENTS ARE CONSIDERED AS CONSISTENT PATTERNS OF GROSS HUMAN RIGHTS VIOLATIONS?

- Resolutions or decisions of the General Assembly, the Human Rights Council and the Economic and Social Council do not contain any clear definition of the terms “pattern” or “gross violation”. However, from the *travaux préparatoires* of the 1503 procedure, it appears that the term “patterns of gross violations” were considered as those that were so severe that they could “no longer [be] regarded as falling exclusively within the domestic jurisdiction of States.”¹
- Moreover, “gross violations”, refer to violations of civil and political and economic, social and cultural rights, occurring in any part of the world and under any circumstances, including in situations of armed conflict, and breaches of international humanitarian law or threat to peace.² For example, the policy of Apartheid fits the definition of a consistent pattern of gross violations of human rights and fundamental freedoms.
- From the *travaux préparatoires*, it also emerged that a “pattern of gross and reliably attested violations of human rights” involves several victims, and a certain number of breaches spread over a minimum period of time, which are particularly inhuman or degrading in character. In its deliberations, the Working Group on Communications takes into account these elements when considering the admissibility and merits of the allegations contained in a communication.
- Furthermore, a communication, alone or in combination with other communications, may reveal a consistent pattern of gross

¹ E/AC.7/SR.637

² E/AC.7/SR.638

and reliably attested violations of human rights if it alleges severe violations of the Universal Declaration of Human Rights repeated on a substantial number of occasions.³

Examples of cases:

- Alleged deteriorating situation of human rights of people belonging to a minority, including forced evictions, racial segregation and substandard living conditions.
- Alleged degrading situation of prison conditions for both detainees and prison workers, resulting in violence and death of inmates.

WHAT ARE THE CRITERIA USED TO ASSESS THE EXHAUSTION OF DOMESTIC REMEDIES?

- Communications should contain information or a statement to the effect that the remedies available under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law and, if possible, documentary proof of any final decision by a court of law or other competent authorities in the State concerned.
- The exception to this requirement is when those remedies would be “ineffective or unreasonably prolonged” (resolution 5/1 par. 87 (g)). For instance, the complainant is not required to exhaust domestic remedies when legislation restricts due process (e.g. absence of an independent judiciary), or when the complainant and/or the victim has been denied access to the remedies, or has been prevented from exhausting them.
- If the State concerned claims that all available domestic

³ E/CN.4/1040, E/CN.4/Sub.2/316

remedies have not been exhausted, the State may be requested by the Working Group to give details on the effective remedies available to the alleged victims in the particular circumstances of the case.

AGAINST WHOM CAN A COMPLAINT BE BROUGHT?

A complaint can be brought against any State member of the United Nations.

WHO CAN SUBMIT A COMPLAINT?

Any individual, group of individuals or non-governmental organisation can submit a complaint to the complaint procedure of the Human Rights Council.

WHAT DOES CONFIDENTIALITY MEAN?

All the materials provided by the complainant and the State concerned, as well as the proceedings at the various stages, remain confidential and are therefore not made public, unless the Council decides otherwise. This also applies to situations that have been discontinued. Moreover, the complainant can request that their identity not be disclosed to the State concerned. While these rules of confidentiality are binding on the United Nations bodies dealing with the complaint, they do not preclude the complainant from disclosing the fact that the complaint has been submitted under the complaint procedure of the Human Rights Council. However, a complaint should not be anonymous as this is a cause for rejection.



WHAT HAPPENS WHEN A COMPLAINT IS DECLARED ADMISSIBLE?

There are four stages in the complaint procedure:

- **FIRST STAGE:**

An initial screening is done by the Chairperson of the Working Group on Communications, together with the secretariat. Only complaints that meet the admissibility criteria are transmitted to the State concerned to obtain their views on the allegations of violations contained therein

- **SECOND STAGE: THE WORKING GROUP ON COMMUNICATIONS**

The Working Group on Communications meets twice a year and decides on the admissibility of a complaint and assesses the merits of the allegations of violations including whether the complaint alone or in combination with other complaints appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

During its sessions, the Working Group on Communications may decide to:

- ▶ dismiss a complaint if it is not admissible under Council resolution 5/1;
- ▶ keep a complaint under review and request the State concerned and/or the complainant to provide further information within a reasonable time;
- ▶ transmit a file containing all admissible communications as well as recommendations thereon to the Working Group on Situations for further consideration.

- **THIRD STAGE: THE WORKING GROUP ON SITUATIONS**

The Working Group on Situations (composed of five representatives of Member States of the Human Rights Council appointed by each regional group to serve in their personal capacity) meets twice a year and is required, on the basis of the information and recommendations provided by the Working Group on Communications, to present the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on which course of action to take.

During its session, the Working Group on Situations may decide to:

- ▶ discontinue its consideration of the situation;
- ▶ keep the situation under review for further consideration or additional information;
- ▶ transmit the situation to the Human Rights Council when it feels that the allegations contained in the communication may reveal consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

- **FOURTH STAGE: THE HUMAN RIGHTS COUNCIL**

The Council examines reports of the Working Group on Situations in a confidential manner (unless it decides otherwise) and may take one of the following decisions:

- ▶ discontinue considering the situation when further consideration or action is not warranted;
- ▶ keep the situation under review and request the State concerned to provide further information within a

reasonable period of time;

- ▶ keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;
- ▶ discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;
- ▶ recommend to OHCHR to provide technical cooperation, capacity building assistance or advisory services to the State concerned.

WHAT INFORMATION SHOULD BE INCLUDED IN A COMPLAINT?

While a complaint need not be presented in a particular format, the use of the complaint form available on the website below is recommended. The complaint should be in writing, legible, preferably typed, and signed.

Communications have to be presented in one of the official United Nations languages (Arabic, Chinese, English, French, Russian and Spanish). The complaint should provide basic personal information (name, nationality, date of birth, postal address and e-mail address of the complainant) and specify the State against which it is directed. The complainant should notify the secretariat as soon as possible of any subsequent change in address or other contact information. It is essential to set out, in chronological order, all the facts on which the complaint is based. The account must be as complete as possible and contain all the information relevant to the case. The complainant must state why he or she considers that the facts described constitute a consistent pattern of gross violations of human rights.

The complainant should also detail the steps he or she has already taken to exhaust the remedies available in the State against which the complaint is directed, in particular the steps taken before the State's local courts and authorities. The requirement to exhaust domestic remedies means that the complaints must have been brought first to the attention of the relevant national authorities, up to the highest available instance, unless it appears that such remedies would be ineffective or unreasonably prolonged. If some of these remedies are pending or have not yet been exhausted, this should also be indicated, as well as the reasons for it.

Complainants should supply copies (and not originals) of all documents of relevance to their complaints and arguments, especially administrative or judicial decisions on the complaints issued by national authorities. If these documents are not in an official language of the United Nations, a full or summary translation must be submitted.

If the complaint lacks essential information to be processed under the complaint procedure of the Human Rights Council, or the description of facts is unclear, the secretariat of the Human Rights Council will contact the complainant with a request for additional details or resubmission.

WHAT DOES THE PRINCIPLE OF NON-DUPLICATION MEAN?

The complaint procedure cannot take up the consideration of a case that is 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.

HAS THERE BEEN ANY INSTANCE WHERE THE CONFIDENTIALITY OF A CASE WAS REMOVED?

The Council decided to discontinue reviewing the case under the confidential procedure and take up public consideration of a matter in two instances, concerning Kyrgyzstan in 2006, following its consideration under the 1503 procedure and Eritrea in 2012.

IS THERE ANY INTERACTION WITH THE AUTHOR OF THE COMMUNICATION DURING THE CONSIDERATION OF A CASE? WHAT KIND OF INTERACTION?

- Council resolution 5/1 in its paragraph 86 emphasizes that the procedure is victims-oriented. Paragraph 106 of resolution 5/1 provides that the complaint procedure shall ensure that the author of a communication is informed of the proceedings at the key stages.
- In line with Council resolution 5/1, the Working Group on Communications may request further information from the author of a communication or a third party if deemed necessary.



WHERE TO SEND YOUR COMPLAINT?

Complaint Procedure Unit

Human Rights Council Branch
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

You can also send your complaint by email at **cp@ohchr.org** or to any country or regional office of the United Nations High Commissioner for Human Rights.

For more information on the complaint procedure of the Human Rights Council, see the webpage and the FAQs at

<http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>



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