

MASTER

GROSS VIOLATIONS
OF
HUMAN RIGHTS

International Commission of Jurists

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GROSS VIOLATIONS
OF
HUMAN RIGHTS

A PRACTICAL GUIDE FOR
NON-GOVERNMENTAL ORGANISATIONS WISHING
TO FILE COMMUNICATIONS WITH THE
UNITED NATIONS

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A Practical Guide for NGOs Wishing to File Communications
With the U.N. Asserting Violations of Human Rights

- I. When should a communication be filed ?
- II. Formal prerequisites.
- III. How a communication is processed.
- IV. Annexes.

INTRODUCTION

A number of Non-Governmental Organisations have expressed the need for a short hand-book to serve as a guide to NGO's wishing to file communications with the U.N. relating to gross violations of human rights.

The new procedure approved by the Economic and Social Council for the examination of such communications is only in its infancy. It may prove a land mark in the implementation of human rights, but if it is to do so, it must be properly used.

To make the task of NGO's easier, the International Commission of Jurists invited Miss Glenda da Fonseca and Mr. George Duke to prepare the hand book. They have done so with a simple and clear text which, it is hoped and believed, will meet this need in a practical way.

The International Commission of Jurists will be glad to have copies of communications filed by NGO's, and to give what assistance they can to those who are preparing them.

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(signed)

Niall MacDermot
Secretary-General

I. When should a communication be filed ?

The UN procedure for processing communications asserting human rights violations was not adopted until 1971, after years of struggle. Although many thousands of such communications were filed before the adoption of this procedure and a number have been filed since, none have yet been heard by the Human Rights Commission. At the present stage of UN human rights implementation, it is difficult to predict what effect the filing of such a communication will have. Therefore, too much hope should not be placed on it, nor should persons be lightly exposed to danger in expectation of relief from the UN.

On the other hand, the only way in which the procedure can be made effective is by its continuous use. In addition, the filing of communications serves to keep public opinion focused on abuses.

It should be noted, however, that the procedure before the Commission on Human Rights involves the fulfilling of several formal and substantive requirements, non-compliance with any of which will, in most cases, render a communication inadmissible. And, even if all conditions are duly complied with, there is no certainty that any action will be taken. In this connection, there is also the danger that non-action by the UN will be misrepresented as a vindication of the accused government.

Finally, it should be recognised that there are no effective judicial or other sanctions which the UN is likely to impose, even if circumstances so require.

These factors are mentioned not to discourage the filing of communications but only to warn potential authors of communications that they should carefully weigh the possible risks as well as benefits before filing and that it is essential to comply strictly with the procedure and vigorously pursue any communication which is filed.

It is especially important that a lawyer conversant with the technical requirements of the procedure and the political realities in the UN be consulted at each step.

II. Formal prerequisites.

What you must do to set the procedure in motion: There are several prerequisites to be complied with before a communication will be deemed admissible. Make sure that each of these is scrupulously observed. Below is a check-list based on the Sub-Commission's rules on admissibility of communications (Res. I (XXIV) 1971). These have been presented in the following order:

- I. Eligibility of NGOs.
- II. Substantive content of the communication.
- III. Existence of other remedies.
- IV. Drafting of the communication.
- V. When and where to submit the communication.

1. What type of NGO may submit communications ?

Any NGO, whether or not in consultative status, may qualify as "author" of a communication, provided the following conditions are satisfied:

- A. it is acting in good faith in accordance with recognised principles of human rights;
- B. it is not resorting to politically motivated stands contrary to the provisions of the UN Charter; and,
- C. it has direct and reliable knowledge of the violations sought to be alleged.

2. If your organisation satisfies all of the above conditions, check on the following concerning the substantive content of the communication:

- A. Can you establish a "consistent pattern" of "gross violations" ? An isolated or single instance of a violation is not enough. The alleged violation must have occurred often enough to form a consistent pattern (e.g. apartheid policies, denial of freedom of movement to the Jews in the U.S.S.R., denial of cultural rights to minorities, regular practice or torture and ill-treatment of prisoners).

- B. Can you reliably attest the allegations ?

Note that communications based on mass media alone will not be admissible. However, communications originating from individuals, authors, even if based on second-hand knowledge, are admissible, provided they contain or are accompanied by clear evidence.

Admissible communications may also originate from a person or group of persons, who, it can be reasonably presumed, are victims of the alleged violations.

Therefore, if you do not have direct knowledge of the allegations, submit your communication jointly with any of the following:

- a. an NGO which does have direct and reliable knowledge;
- b. an individual having direct and reliable knowledge;
- c. an individual who has second-hand knowledge but has clear evidence to support the allegations;
- d. a person or group of persons claiming to be victims of the alleged violations.

3. Communications to the Human Rights Commission must be used as last resort. Before you decide to submit a communication, make sure that all other existing remedies have been resorted to:

- A. If your communication concerns violation of trade union rights (e.g., freedom of association, right to collective bargaining, right to strike) do not submit it to the Human Rights Commission. The International Labour Organisation (ILO) handles such communications. Hence they will not be admissible before the Human Rights Commission.
- B. Check whether all possible remedies on the national level have been resorted to. National remedies will vary with each State, but basically you must ascertain that all legal, administrative or other procedures within the national system have been invoked and that no redress has been obtained.
If, however, you can show that a) such remedies would be ineffective or b) unnecessarily prolonged, you need not exhaust local remedies. But you must be able to substantiate your claim that local remedies would be ineffective or unnecessarily prolonged.
- C. If your communication relates to a case which has already been settled by the State concerned in accordance with the principles of and laws on human rights, it will not be admissible.

4. Drafting the communication:

- A. Describe the facts relating to the alleged violation.
- B. Indicate the purpose of the communication.
- C. Indicate the rights that have been violated.
 To do so, you should refer at least to the following UN instruments on substantive human rights law: (*)
 - Universal Declaration of Human Rights;
 - Convention on the Elimination of all Forms of Racial Discrimination;
 - UN Standard Minimum Rules for the Treatment of Prisoners;
 - International Covenant on Economic, Social and Cultural Rights;
 - International Covenant on Civil and Political Rights.
- D. Clearly identify yourself on the communication, as anonymous communications are inadmissible. Your communication will be classified as confidential and your identity not disclosed when the communication is distributed to the Sub-Commission. If you wish your identity to be divulged, indicate this on your communication.
- E. Do not use abusive language or insulting references to the State concerned, as this will render your communication inadmissible. Although the rules do provide that the communication will be admissible if, after deletion of the offending language, all other criteria are met with, this may entail some delay, and it is advisable to phrase the communication in a suitable manner.

(*) This list is purely indicative and certainly not exhaustive. A useful reference is Human Rights. A Compilation of International Instruments of the United Nations, (U.N. sales No. E.68.XIV.6) which contains the text of all the Human Rights Instruments as of 1967.

- F. A communication having "manifestly political motivations" and whose subject is contrary to the UN Charter will be inadmissible. While, of course, every communication may be construed as being politically motivated to some degree, your communication should reflect above all a humanitarian concern regarding the rights allegedly violated.
5. When and where to submit the communication:
- A. Submit your communication within a reasonable time after the exhaustion of local remedies. Too long a delay will make the communication inadmissible.
 - B. Subject to change, the Working-Group of the Sub-Commission meets annually in August. Your communication should be submitted at least by May of the same year, so that the Government concerned has the opportunity to reply to the communication if it wishes to do so, and the UN Secretariat is able to have the communication distributed to members of the Sub-Commission.
 - C. If you need more time to obtain attestations, photographs, etc., indicate this on your original communication and submit additional material as annexes.
 - D. Address your communication to:

The Secretary-General
United Nations
New York, N.Y. 10017
U.S.A.

III. How a communication is processed.

1. The bodies involved in the handling of communications
 2. The procedure
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1. Four bodies are involved in the handling of communications:
 - A. The Economic and Social Council (ECOSOC); comprised of 27 members elected by the General Assembly. Members are responsible to their governments.
 - B. The Human Rights Commission : One of ECOSOC's 6 functional commissions, it is comprised of 32 members elected by ECOSOC. Members represent their governments.
 - C. The Sub-Commission on Prevention of Discrimination and Protection of Minorities: a subsidiary body of the Human Rights Commission, it is comprised of 25 members elected by the Human Rights Commission from experts nominated by States members of the UN, due regard being given to geographical distribution. Members serve in their personal capacity as individual experts and are, in principle, not responsible to their governments. (Despite its title, the Sub-Commission may perform any task entrusted to it by ECOSOC or the Human Rights Commission).
 - D. Working-Group of the Sub-Commission: comprised of 5 members of the Sub-Commission, appointed by the latter on the basis of geographical distribution, so that each member represents one geographical region.
 2. Procedure followed in handling of your communication:
 - A. On receipt of the communication the Secretariat of the UN will send you an acknowledgement. A copy of the communication will be sent to the government concerned, and the latter invited to reply to the communication

- if it wishes to do so.
- B. Your communication, with others of its kind, will be classified as confidential; it will be summarised and placed on the "confidential list" of summaries. In this form it will be distributed to members of the Sub-Commission. (Distribution of summaries are made each month).
 - C. When the Working-Group meets for its annual session, it may request the Secretariat to provide it with the originals of communications appearing on the list.
 - D. Based on the original communication and the government's reply, if any, the Working-Group will decide which communications appear to reveal a consistent pattern of gross violations. If the Working-Group decides by majority decision that a prima facie case of a consistent pattern has been established, it will refer the communication to the Sub-Commission.
 - E. Assuming that your communication has got this far, it is now examined by the Sub-Commission. The Sub-Commission goes into the merits of the communication, and decides whether to refer to the Human Rights Commission those communications that appear to reveal a consistent pattern of gross violations. Note that even if the Sub-Commission is satisfied that a consistent pattern has been established, it may or may not decide to refer the communication to the Human Rights Sub-Commission. The matter is entirely within the discretion of the Commission.
 - F. Once the communication is referred to the Human Rights Commission, it becomes the subject of either one of the following courses of action, to be decided by the Human Rights Commission:

- a) a thorough study by the Human Rights Commission with report and recommendations thereon to ECOSOC;
- b) an investigation by an ad hoc committee to be appointed by the Commission.

If the Commission decides that a study is to be undertaken, this will be done without further ado.

If the Commission decides that an investigation is necessary, this may be undertaken only:

- a) with the express consent of the State concerned, in constant cooperation with it and under conditions determined in agreement with it;
- b) after all available means at the national level have been resorted to and exhausted;
- c) where the situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of conventions adopted by the UN, its specialised agencies, or in regional conventions.

This means that the situation should not relate to a matter which is being dealt with e.g. by any of the following:

1. Trusteeship Council
2. Committee of 24 (Colonial Countries & Peoples)
3. Committee on Apartheid
4. General Assembly's 4th. Committee (Trusteeship and non-self-governing territories)
5. Committee/Israeli-occupied Territories
6. Ad-hoc working group of Experts of the Human Rights Commission to investigate allegations of torture, ill-treatment of prisoners in S.Africa, S.Rhodesia, Namibia and Territories under Portuguese administration.
7. ILO's Committee on Freedom of Association

8. UNESCO's Good Offices and Conciliation Commission for the implementing of the Convention on Discrimination in Education.
9. European Commission on Human Rights.
10. Inter-American Commission on Human Rights.

d) where the situation does not relate to a matter which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.

G. The composition of the ad hoc committee appointed on the satisfaction of the above conditions will be determined by the Human Rights Commission. Members will be independent persons of competence and impartiality, and their appointment will be subject to the consent of the Government concerned. The committee will establish its own rules of procedure and will have the authority to receive and hear witnesses as necessary.

The committee's procedure will be confidential.

It will strive for friendly solutions before, during and even after the investigation.

The committee will report to the Human Rights Commission with such observations and suggestions as it may deem appropriate.

IV. ANNEXES

1. ECOSOC Resolution 1503 (XLVII)

Procedure for dealing with communications relating to violations of human rights and fundamental freedoms - (27 May 1970)

The Economic and Social Council,

Noting resolutions 7 (XXVI) and 17 (XXV) of the Commission on Human Rights and resolution 2 (XXI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. Authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;

2. Decides that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should, as the first stage in the implementation of the present resolution, devise at its twenty-third session appro-

private procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII) and in accordance with Council resolution 1235 (XLII) of 6 June 1967;

3. Requests the Secretary-General to prepare a document on the question of admissibility of communications for the Sub-Commission's consideration at its twenty-third session;

4. Further requests the Secretary-General:

(a) To furnish to the members of the Sub-Commission every month a list of communications prepared by him in accordance with Council resolution 728 F (XXVIII) and a brief description of them, together with the text of any replies received from Governments;

(b) To make available to the members of the working group at their meetings the originals of such communications listed as they may request, having due regard to the provisions of paragraph 2 (b) of Council resolution 728 F (XXVIII) concerning the divulging of the identity of the authors of communications;

(c) To circulate to the members of the Sub-Commission, in the working languages, the originals of such communications as are referred to the Sub-Commission by the working group;

5. Requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings, in accordance with para-

graph 1 above, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;

6. Requests the Commission on Human Rights after it has examined any situation referred to it by the Sub-Commission to determine:

(a) Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII);

(b) Whether it may be a subject of an investigation by an ad hoc committee to be appointed by the Commission which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it. In any event, the investigation may be undertaken only if:

- (i) All available means at the national level have been resorted to and exhausted;
- (ii) The situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the

United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.

7. Decides that if the Commission on Human Rights appoints an ad hoc committee to carry on an investigation with the consent of the State concerned;

(a) The composition of the committee shall be determined by the Commission. The members of the committee shall be independent persons whose competence and impartiality is beyond question. Their appointment shall be subject to the consent of the Government concerned;

(b) The committee shall establish its own rules of procedure. It shall be subject to the quorum rule. It shall have authority to receive communications and hear witnesses, as necessary. The investigation shall be conducted in co-operation with the Government concerned;

(c) The committee's procedure shall be confidential, its proceedings shall be conducted in private meetings and its communications shall not be publicized in any way;

(d) The committee shall strive for friendly solutions before, during and even after the investigation;

(e) The committee shall report to the Commission on Human Rights with such observations and suggestions as it may deem appropriate;

8. Decides that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council;

9. Decides to authorize the Secretary-General to provide all facilities which may be required to carry out the present resolution making use of the existing staff of the Division of Human Rights of the United Nations Secretariat;

10. Decides that the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement.

2. Sub-Commission Resolution 1 (XXIV)

Question of the violation of Human Rights and Fundamental freedoms, including policies of racial discrimination and segregation and of Apartheid, in all countries, with particular reference to colonial and other dependent countries and territories - (13 August 1971)

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering that the Economic and Social Council, by its resolution 1503 (XLVIII), decided that the Sub-Commission should devise appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F(XXVIII) of 30 July 1959 and in accordance with Council resolution 1235(XLII) of 6 June 1967,

Adopts the following provisional procedures for dealing with the question of admissibility of communications referred to above:

(1) Standards and criteria

(a) The object of the communication must not be inconsistent with the relevant principles of the Charter, of the Universal Declaration of Human Rights and of the other applicable instruments in the field of human rights.

(b) Communications shall be admissible only if, after consideration thereof, together with the replies if any of the Governments concerned, there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental

freedoms, including policies of racial discrimination and segregation and of apartheid in any country, including colonial and other dependent countries and peoples.

(2) Source of communications

(a) Admissible communications may originate from a person or group of persons who, it can be reasonably presumed, are victims of the violations referred to in subparagraph (1) (b) above, any person or group of persons who have direct and reliable knowledge of those violations, or non-governmental organizations acting in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and having direct and reliable knowledge of such violations.

(b) Anonymous communications shall be inadmissible; subject to the requirements of subparagraph 2 (b) of resolution 728 F (XXVIII) of the Economic and Social Council, the author of a communication, whether an individual, a group of individuals or an organisation, must be clearly identified.

(c) Communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence.

(3) Contents of communications and nature of allegations

(a) The communication must contain a description of the facts and must indicate the purpose of the petition and the rights that have been violated.

(b) Communications shall be inadmissible if their language is essentially abusive and in particular if they contain insulting references to the State against which the complaint is directed. Such communications may be considered if they meet the other criteria for admissibility after deletion of the abusive language.

(c) A communication shall be inadmissible if it has manifestly political motivations and its subject is contrary to the provisions of the Charter of the United Nations.

(d) A communication shall be inadmissible if it appears that it is based exclusively on reports disseminated by mass media.

(4) Existence of other remedies

(a) Communications shall be inadmissible if their admission would prejudice the functions of the specialized agencies of the United Nations system.

(b) Communications shall be inadmissible if domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged. Any failure to exhaust remedies should be satisfactorily established.

(c) Communications relating to cases which have been settled by the State concerned in accordance with the principles set forth in the Universal Declaration of Human Rights and other applicable documents in the field of human rights will not be considered.

(5) Timelines

A communication shall be inadmissible if it is not submitted to the United Nations within a reasonable time after the exhaustion of the domestic remedies as provided above.

3. Sub-Commission Resolution 2(XXIV)

Question of the violation of Human Rights and Fundamental freedoms, including policies of racial discrimination and segregation and of Apartheid, in all countries with particular reference to colonial and other dependent countries and territories - (16 August 1971)

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering that the Economic and Social Council in paragraph 1 of resolution 1503 (XLVIII), adopted on 27 May 1970, authorized the Sub-Commission to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding 10 days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission.

1. Decides that the working group referred to in paragraph 1 of Economic and Social Council resolution 1503 (XLVIII) shall be constituted in the manner set out below:

(a) Before the end of each session of the Sub-Commission, the names of five members of the Sub-Commission shall be selected by the Chairman, after consultations with the members of each geographical area to constitute the working group for the next session, one from each of the following geographical areas, namely (i) African, (ii) Asian, (iii) Eastern European, (iv) Western European and other States, (v) Latin American,

(b) If necessary, the Chairman or the outgoing Chairman may at any time, in order to fill a vacancy, designate a member from among the names of all Sub-Commission members of the same geographical area.

2. Further decides that the Working Group shall hold closed meetings and that the results of the Working Group's work shall be communicated to the Sub-Commission confidentially.

4. ECOSOC Resolution 728F

(30 July 1959)

Communications concerning Human Rights

The Economic and Social Council,

Having considered chapter V of the report of the Commission on Human Rights on its first session, concerning communications, and chapter IX of the report of the Commission on its fifteenth session,

1. Approves the statement that the Commission on Human Rights recognizes that it has no power to take any action in regard to any complaints concerning human rights;

2. Requests the Secretary General:

(a) To compile and distribute to members of the Commission on Human Rights before each session a non-confidential list containing a brief indication of the substance of each communication, however addressed, which deals with the principles involved in the promotion of universal respect for, and observance of, human rights and to divulge the identity of the authors of such communications unless they indicate that they wish their names to remain confidential;

(b) To compile before each session of the Commission a confidential list containing a brief indication of the substance of other communications concerning human rights, however addressed, and to furnish this list to members of the Commission, in private meeting, without divulging the identity of the authors of communications except in cases where the authors state that they have already divulged or intend to divulge

their names or that they have no objection to their names being divulged;

(c) To enable the members of the Commission upon request, to consult the originals of communications dealing with the principles involved in the promotion of universal respect for, and observance of, human rights;

(d) To inform the writers of all communications concerning human rights, however addressed, that their communications will be handled in accordance with this resolution, indicating that the Commission has no power to take any action in regard to any complaint concerning human rights;

(e) To furnish each Member State concerned with a copy of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in sub-paragraph (b) above;

(f) To ask Governments sending replies to communications brought to their attention in accordance with sub-paragraph (e) whether they wish their replies to be presented to the Commission in summary form or in full;

3. Resolves to give members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, with respect to communications dealing with discrimination and minorities, the same facilities as are enjoyed by members of the Commission on Human Rights under the present resolution;

4. Suggests to the Commission on Human Rights that it should at each session appoint an ad hoc committee to meet shortly before its next session for the purpose of reviewing the list of communications prepared by the Secretary-General under paragraph 2(a) above and of recommending which of these communications, in original, should, in accordance with paragraph 2(c) above, be made available to members of the Commission on request.