

Reclaiming the People's Mechanism:

Confronting the
Disappearing
Records at the
ACHPR

Concept Note

3 MAY 2025

Time:
15:00 PM – 17:00PM(GMT)

Venue (In-person):
Sir Dawda Kairaba Jawara International
Conference Centre, Banjul, The Gambia

Occasion:
On the margins of the 83rd
Ordinary Session of the African Commission
on Human and Peoples' Rights (ACHPR),
Banjul, The Gambia



Litigants'
Group



A. Background

Article 59(1) of the African Charter on Human and Peoples' Rights stipulates that all measures taken within the framework of Chapter three shall remain confidential until such time as the Assembly of Heads of State and Government shall otherwise decide. While originally framed as a procedural safeguard, the African Commission on Human and Peoples' Rights (ACHPR) has interpreted this provision in a way that imposes blanket confidentiality on its handling of communications, including decisions, pleadings, and procedural records, until formal endorsement by the African Union's political organs. This interpretation

significantly departs from both the normative standards of international human rights law and the African's citizens aspirations for the African human rights system.

From a legal perspective, this approach is inconsistent with the right to a fair and public trial, a foundational norm under international law and democratic governance. Article 10 of the Universal Declaration of Human Rights, Article 14 of the ICCPR, and comparable provisions under the ECHR and ACHR enshrine the right to a public hearing and access to information. Confidentiality is the exception, not the rule. It is only warranted in cases involving public safety, protection of minors, or extreme sensitivity. By contrast, the ACHPR's current interpretation inverts

this norm, applying secrecy as the default even in standard communications without justification.

Moreover, the interpretation undermines the principle of equality of arms, which, although not explicitly codified in the African Charter, is recognized under Articles 60 and 61 through reference to general principles of international law. This principle mandates that parties in a dispute have equal opportunity to present their cases, access legal resources, and engage with the process. Blanket confidentiality hinders applicants from seeking third-party legal support, engaging in public advocacy, and submitting amicus curiae briefs, since even their own pleadings are inaccessible.

The African Commission's Rules of Procedure (2020) allow third-party participation, such as amicus curiae and interested stakeholders. However, these actors cannot meaningfully engage without access to the pleadings or a basic understanding of the pending matters. This procedural bottleneck stifles transparency and weakens the Commission's capacity to deliver substantively informed outcomes.

Further still, this interpretation is logically flawed, most communications reaching the ACHPR have already passed through

national judicial systems and generated court records—publicly available documents in many jurisdictions. Rebranding these same pleadings as confidential at the regional level contradicts open access principles and introduces unnecessary opacity. It also disempowers complainants, who are barred from mobilizing public or legal support during what is often a years-long litigation process.

From a broader lens, this regressive reading of Article 59(1) is incompatible with the African Union's 2025 theme "Justice for Africans and People of African Descent through Reparations" and Aspiration 3 of Agenda 2063, which envisions a continent of good governance, democracy, and human rights. The secrecy surrounding communications weakens public scrutiny, civic mobilization, and stakeholder participation, key elements of a reparative and democratizing justice process.

At the 81st Ordinary Session of the ACHPR in October 2024, a dedicated panel on Article 59(1) was convened by the Commission in collaboration with members of the Article 59(1) Campaign. The panel brought together civil society actors, National Human Rights Institutions (NHRIs), state representatives, and the Commission itself to examine the impact of the current interpretation of Article

59(1), which imposes blanket confidentiality on communications. Stakeholders expressed deep concern that this approach undermines access to information, impedes advocacy, limits fair trial guarantees, and restricts third-party engagement in pending cases. The discussion marked a pivotal moment in acknowledging the growing procedural and normative disconnect between the ACHPR's protective mandate and its operational practices.

This upcoming side event builds on that conversation, providing a follow-up platform to explore the lived consequences of these restrictions and to articulate a unified call for procedural reform.

B. Rationale

The African Commission once facilitated a more balanced and participatory engagement with its mechanisms. Historically, it would transmit adopted decisions to the parties, requesting confidentiality until formal endorsement by the AU. It would also report to the Executive Council twice annually, creating shorter wait times for publication. Those practices have now been dismantled, and in their place stands a mechanism that frustrates justice seekers while offering preferential access to states.

This side event is a necessary follow-up to the October 2024 panel on Article 59(1), with a sharper focus on the lived experiences of users of the African Commission's Communications mechanism. It provides a space to critically examine what is now widely perceived as a structural weakening of the Commission's accountability framework.

The consequences of this interpretation are increasingly untenable. We are now faced with the absurd situation where victims of human rights violations are denied access to final decisions for over fifteen months, even after being informed by the ACHPR that a decision on the merits had been adopted. The Commission insists that its reading of the Charter allows it to withhold such decisions until the AU Assembly considers its activity report, without offering clarity on when, or if, those decisions will be shared. This procedural opacity not only undermines the principle of timely justice but also threatens to render the entire communications procedure ineffective and unfit for purpose.

The event seeks to:

- Amplify the grievances of applicants, litigators, and civil society actors whose efforts to obtain justice have been impeded by procedural opacity;
- Highlight how the Commission's

strict confidentiality rules, particularly its failure to release decisions after adoption, undermine the timeliness, legitimacy, and transparency of its work;

- Examine how the inaccessibility of pleadings restricts advocacy, prevents amicus participation, and disempowers the public from engaging in parallel mobilization efforts;
- Reveal how the shift to a single annual AU summit delays communication outcomes by up to a year or more, with no clear guidelines on when parties will be notified of decisions;
- Connect these operational regressions with broader trends of democratic backsliding and civic shrinkage across the continent.

This moment calls for a collective and coordinated pushback. Beyond reiterating the harms caused by the current interpretation of Article 59(1), the side event will aim to develop concrete proposals for procedural reforms, including the re-establishment of prior good practices, adoption of timelines for decision-sharing, and clarification of rules on pleadings and publicity.

The event will also serve as a strategic platform to engage member states who

encourage human rights litigation and transparency, such as those that participated constructively in the 81st session, to build a bloc of support for reversing this regressive trajectory.

C. Objectives

General Objective:

To convene a platform for critical dialogue between users of the African Commission's communications mechanism on the implications of Article 59(1) for access to justice, transparency, and accountability.

Specific Objectives:

- To document and elevate mechanism users' lived experiences of procedural opacity and delays.
- To scrutinize the ACHPR Secretariat's interpretation of Article 59(1) in light of regional and international best practices.
- To generate practical proposals for procedural reforms that promote timely dissemination of decisions and access to case materials.
- To mobilize member states and NHRIs to advocate for a user-centred approach to communication procedures.

D. Expected Outcomes

- Clear articulation of user demands for procedural transparency and reform.
- Reaffirmed call for the ACHPR to revert to practices that prioritized communication with parties upon decision adoption.
- Consensus on the need for formal guidelines and timelines for decision dissemination.
- Strengthened alliance between civil society, NHRIs, and aligned member states to press for procedural safeguards.
- Drafting and endorsement of a joint stakeholder statement or declaration outlining clear demands for:
 - *A progressive reinterpretation of Article 59(1),*
 - *Restoration of access to pleadings and decisions,*
 - *Procedural timelines for communication handling,*
 - *Institutional accountability within the ACHPR and its Secretariat.*
- Presentation of the signed declaration to the ACHPR as a unified position of users and stakeholders.

E. Format and Participation

The event will adopt a hybrid roundtable-dialogue format, featuring:

- Opening reflections by Article 59(1) Campaign representatives
- Brief narratives from complainants and litigants highlight the real-life consequences of the Commission's current practice
- Expert analysis by legal scholars
- Reflections from Member State delegates
- Moderated plenary discussion and Q&A

F. Target Participants

- Complainants and litigants before the ACHPR
- Civil society organizations and strategic litigation networks
- Representatives of AU Member States attending the 83rd Session
- National Human Rights Institutions (NHRIs)
- Legal scholars and media actors concerned with access to justice