

The Narrow Interpretation of **Article 59(1)** of the African Charter on Human and People's Rights:

Impacts, National, International
and Regional Comparisons, and
Recommendations



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(A) General

1.1. This research memorandum (the "Memorandum") is a summary of the results of the research carried out to address the African Commission on Human and People's Rights' (the "African Commission" or "Commission") restrictive interpretation of Article 59 of the African Charter on Human and People's Rights (the "African Charter"), which has led to broad restrictions on publishing pleadings and documents filed with the African Commission, thus limiting the ability of civil society to engage on important rights issues and advance human rights across the African continent (the "Project"). This Memorandum sets out how a narrow interpretation of Article 59 by the African Charter hinders the effective implementation of the African Commission's decisions on communication and hinders civil society organisation from contributing to the African Commission's jurisprudence and from advocating for human rights issues which are also the subject of communication before the African Commission. This research will also present recommendations for the African Commission to adopt a more progressive stance, which can significantly improve Africa's legal development and accountability of its human rights system, aligning it with regional and international standards.

(B) Introduction

1. Background to the African Charter

- 1.2. Following the creation of the Organisation of African Unity ("OAU") in 1963, several conferences were organised in the African continent by different organizers, including the media, the church, inter-governmental and non-governmental organisations to discuss the establishment of a human rights protection mechanism on the continent. These groups also mounted pressure on the OAU to prioritise the protection and promotion of human rights by exposing human rights abuses happening on the continent, including those committed by the OAU's own members.
- 1.3. In July 1979, the OAU Assembly of Heads of State and Government held in Liberia, adopted a resolution for the formation of a committee to draft an African Charter on Human and People's Rights, which would provide mechanisms to protect and promote the human rights to be embodied in the African Charter. The draft produced by the committee was unanimously adopted at a meeting of the OAU Heads of States and Government held in Kenya in 1981.
- 1.4. The African Commission, which was established pursuant to Article 30 of the African Charter, continues to play an increasingly important role in monitoring the implementation of the African Charter. According to Article 45 of the African Charter, the responsibilities of the African Commission include:
- a. ensuring the protection of human and peoples' rights covered by the African Charter;
 - b. promoting human rights through research, education and publicity;
 - c. developing principles and rules aimed at solving human and peoples' rights on which African Governments may base their human rights legislation;
 - d. cooperating with other African and international institutions with similar objectives;
 - e. interpreting the provisions of the African Charter; and
 - f. performing any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

2. Background to Article 59 of the African Charter

2.1. Article 59 of the African Charter provides that:

"1. All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.

2. However the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government."

2.2. The "present chapter" referred to in Article 59(1) is Chapter III (Articles 46 to 59) of the African Charter, which deals with procedures of the Commission, including communication from states.

2.3. During the early years of its operation, the African Commission interpreted Article 59 to mean strict confidentiality in respect of communications by states, the result being that neither information on communications nor decisions made in respect of such communications were published.¹ For instance, the Sixth Annual Activity Report of the African Commission in 1993 had two versions: the version which was adopted by the Assembly, which included an annex on communications before the African Commission and a version which was ultimately published, from which the annex on communications was excluded. The communication annex which was previously excluded from the Sixth Annual Activity Report of the African Commission was published following requests from NGOs for the annex to be made available.² In its activity reports since 1994, the African Commission has included records of its decisions on communications.

2.4. While the African Commission has moved away from interpreting Article 59 to mean strict confidentiality in respect of communications, this has not changed the general interpretation of the Article by the African Commission. In practice, the African Commission has interpreted the words "all measures" to mean "everything done and received" by the African Commission remains confidential.³ This is evidenced in the

1 M Killander "Confidentiality Versus Publicity: Interpreting Article 59 of the African Charter on Human and Peoples' Rights" 6 (2006) African Human Rights Law Journal 572-581 at 578.

2 Ibid.

3 Dr. R Nekura and S. Ndashe "Confidentiality or Secrecy? Interpretation of Article 59, and Implications for Advocacy on Pending Communications before the African Commission" at 49.

Africa Commission's history of requiring civil society organisations to take down their pleadings published on their websites to raise awareness on pending communications on the basis that the proceedings are confidential.⁴

2.5. Under the African Commission's current conceptualisation of Article 59, confidentiality applies at every stage of a communication: while a communication is pending documents relating to such communication is accessible only by the parties and the African Commission and once the African Commission has reached its decision on a communication and such communication is adopted, it is not disclosed, even to the parties to the communication, without the disclosure or publication thereof has been approved by the Assembly.⁵ More plainly, the African Commission's restrictive interpretation extends the confidentiality mandate to include all related records, involvement of parties, and legal documents such as pleadings and decisions.

2.6. The following sections of this Memorandum consider the impact of the African Commission's interpretation of Article 59 of the African Charter as set out above.

(C) The Memorandum

1. Does the confidentiality principle of the African Charter as interpreted by the African Commission violate fundamental rights provided under relevant international and regional human rights treaties?

1.1. The role of publicity in protecting and promoting human rights

- a. Publicity plays a crucial role in protecting and promoting human rights, serving as both a tool for raising awareness and a mechanism for holding the parties involved accountable. In the digital age, the power of social media and other social platforms has transformed how human rights and human rights instruments such as the African Charter are perceived, as well as the way human rights issues are brought into the light and discussed. Moreover, publicity has strengthened NGOs'

4 B Ayuk "ACHPR 69th OS: IHRDA Statements on Interpretation of Article 59 of the African Charter on Confidentiality" (16 November 2021) <https://www.ihrda.org/2021/11/achpr-69th-os-ihrda-statement-on-interpretation-of-article-59-of-african-charter-on-confidentiality/>.

5 R Murray "Confidentiality and the Implementation of the Decisions of the African Commission on Human and Peoples' Rights (2019) 19 African Human Rights Law Journal 1-24 at 4.

mobilisation and advocacy initiatives by enabling them to drive social engagement and maintain momentum during litigation, which can last for years after a case is brought before a human rights body.

- b. Moreover, publicity acts as a deterrent against human rights abuses. When human rights violations are brought to light, it subjects perpetrators to public scrutiny, potentially leading to legal action, sanctions, or social ostracism. This was evident in the international reaction to the Rohingya crisis, where extensive media coverage and reporting by human rights organizations like Amnesty International and Human Rights Watch played a crucial role in drawing global attention and demanding accountability.⁶
- c. While human rights litigation continues to play an increasingly important role in protecting and promoting human rights, its impact is best realised and understood in relation, and in addition, to processes such as advocacy and mobilisation,⁷ which depend primarily on publicity and visibility to achieve their objectives. Therefore, public awareness is foundational to the protection and promotion of human rights; it educates the general populace on the rights they are entitled to and the breaches that occur worldwide. Such awareness is pivotal for mobilizing public opinion, influencing policy changes, pressuring litigants to implement decisions of bodies such as the African Commission, and pressuring governments and organizations to uphold human rights standards. It is for this reason that the United Nations itself recognizes the significance of “strengthening of the role and capacity of the mass media in the furtherance of human rights education”.⁸
- d. Publicity during pending communications (including allowing parties to publicise their submissions to the African Commission) ensures that the public receives reliable information on human rights issues brought before the Commission, and encourages the public to engage such issues.⁹ The global outrage following the

6 Amnesty International ““My World is Finished” Rohingya Targeted in Crimes Against Humanity in Myanmar” (2017) Amnesty International; Human Rights Watch “Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli (19 December 2017) <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli>.

7 Dr. R Nekura and S. Ndashe “Confidentiality or Secrecy? Interpretation of Article 59, and Implications for Advocacy on Pending Communications before the African Commission” at 47

8 United Nations General Assembly “Human Rights Questions: Human Rights Questions including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms” (12 December 1996) A/51/506/Add.1.

9 Ibid.

publication of abuses can catalyse international responses, ranging from diplomatic pressures to humanitarian interventions.

- e. Following a decision on the communication, publicity not only ensures that the public is kept informed, but also enables NGOs and other civil society groups to keep pressure on states to implement the decisions of the African Commission. This promotes the accountability of states and puts pressure on the African Commission to fulfil its duties of monitoring the implementation of the provisions of the African Charter.
- f. However, one must also bear in mind that there may be interests that conflict with publicity, such as the protection of participants in sensitive cases¹⁰ or the confidentiality of state communications. In particular communication between states is often treated and acknowledged as confidential (even under legislation allowing access to state files/documents/information), as such a kind of interstate conflict resolution mechanism that allows for confidential diplomatic discussions and potentially face-saving solutions is key to the success in many cases.

1.2. The Effect of a Restrictive Interpretation of Article 59 on the Right to Information and Freedom of Expression under the African Charter

- a. The African Charter establishes a broad framework for the protection of human rights and peoples' rights across the African continent. Among its provisions, the Charter recognizes the right to freedom of expression and the right to receive information, both of which are integral to the functioning of democratic societies. Particularly, the African Commission recognises that the right to information and freedom of expression are intersectional rights that are fundamental to the realisation of all other human rights, including socio-economic rights.¹¹
- b. Article 9 of the ACHPR provides that:

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law."

10 Rules of Court - 28 March 2024 (coe.int), accessed on 6 June 2024.

11 African Commission on Human and People's Rights "Declaration of Principles on Freedom of Expression and Access to Information in Africa" Adopted by the ACHPR at its 65th Ordinary Session held from 21 October to 10 November 2019 in Banjul, The Gambia at 8.

- c. The relationship between the right to receive information and the right to freedom of expression under the ACHPR is symbiotic. Access to information is a prerequisite for meaningful exercise of freedom of expression. For NGOs and other civil society organisations, the inability to access accurate and timely information prevents them disseminating information that enables individuals to form well-rounded opinions and engage in substantive debates on matters of public interest. This is particularly significant in the context of human rights litigation, where access to information on ongoing proceedings is central to keeping the public informed of developments in the matter and for enabling civil society organisations and other NGOs to get involved in the proceedings as *amicus curiae*. Public institutions have an obligation to promote the access to information which translates into an obligation to have a regime in place to facilitate access to the information they have available.
- d. The restrictive interpretation of Article 59 limits the information available to the public on communications before the African Commission. The impact of this is that parties that would have an interest in litigation taking place before the African Commission are either not aware of the proceedings taking place, or they are unable to get access to the information they need to formulate their views on the issues under consideration and submit *amicus curiae* submissions.¹²
- e. Moreover, the right to receive information under the ACHPR has implications for transparency and accountability in respect of human rights issues and how they are dealt with by the African Commission. Principle 28 of the African Commissions' Declaration of Principles on Freedom of Expression (the "Declaration") requires the right of access to information to be interpreted in a manner that permits maximum disclosure, and to be limited by narrowly defined exemptions that comply with international human rights laws and standards¹³. Additionally, Principle 29 of the Declaration requires public bodies, "... even in the absence of a specific request, to proactively publish information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities".¹⁴

12 B Ayuk "ACHPR 69th OS: IHRDA Statements on Interpretation of Article 59 of the African Charter on Confidentiality" (16 November 2021) <https://www.ihrda.org/2021/11/achpr-69th-os-ihrda-statement-on-interpretation-of-article-59-of-african-charter-on-confidentiality/>

13 ACHPR note 11 above at 20.

14 *Ibid.*

The Declaration contains soft law guidelines and “establishes or affirms the principles for anchoring the rights to freedom of expression and access to information in conformance with Article 9 of the African Charter”¹⁵. In this context the African Commission must, arguably, embody and be bound by the same principles that it wishes States to apply. By interpreting Article 59 in a manner that over-extends the confidentiality principles thereof to the entirety of the communication procedure, the African Commission prevents any persons who are not parties to the communication from receiving any information while communications are pending. Furthermore, by making the decision of the African Commission confidential subject to the consent of the African Commission, one does not guarantee any access to information after the communication has concluded.

- f. Article 59, as currently interpreted by the African Commission, has implications on the transparency of the communications procedures of the African Commission, the public’s ability to form and disseminate opinions on human rights issues before the commission, and the public’s ability to hold perpetrators of human rights abuses accountable for implementing the decisions of the African Commission.¹⁶ Ultimately, the African Commission’s interpretation of Article 59 means not only that the public’s right to receive information has been limited, but also that, as a result, members of the public are unable to exercise their right to express and disseminate their opinions insofar as it relates to communications before the African Commission.
- g. Notably, Principle 32 of the Declaration sets out limited circumstances in which information may be withheld, and provides that:
 - i. Information may only be legitimately withheld where the harm to the interest protected under the relevant exemption demonstrably outweighs the public interest in disclosure of the information. Such information may only be withheld for the period that the harm could occur.
 - ii. Where a portion of a document containing requested information is exempted from disclosure, the exempted portion shall be severed or redacted and access granted to the remainder of the document that is not exempted from disclosure.

15 ACHPR note 11 above at 3.

16 Dr. R Nekura and S. Ndashe “Confidentiality or Secrecy? Interpretation of Article 59, and Implications for Advocacy on Pending Communications before the African Commission” at 52.

- iii. Laws governing classification of information shall stipulate the maximum period of the classification and restrict classification only to the extent necessary, never indefinitely.
- iv. Information may only be legitimately withheld as an exemption if its release would:
 - E. result in the unreasonable disclosure of the personal information of a third party;
 - F. cause substantial prejudice to a legitimate commercial or financial interest of relevant stakeholders or other third party;
 - G. endanger the life, health or safety of an individual;
 - H. cause substantial prejudice to the national security and defence of the State;
 - I. cause substantial prejudice to international relations where the information relates to information required to be held in confidence under international law, the position of the State with respect to international negotiations, and diplomatic or official correspondence with States or international organisations and diplomatic or consular missions;
 - J. cause prejudice to law enforcement, in particular, the prevention and detection of crime, apprehension or prosecution of offenders and the administration of justice;
 - K. result in the disclosure of confidential communication between medical practitioner and patient, lawyer and client, journalist and sources, or is otherwise privileged from disclosure in legal proceedings; or
 - L. jeopardise the integrity of a professional examination or recruitment process.
- h. Currently, the initial position of the African Commission in interpreting Article 59 is that information relating to communication is confidential. This is in contrast with the principles of the Declarations set out above, which require maximum disclosure, subject to the provision that Information may be withheld if it falls under the principle set out in Principle 32 above. By continuing to favour a restrictive interpretation of Article 59, the African Commission undermines its own principles for the interpretation and application of Article 9 of the African Charter.
- i. In conclusion, the given restrictive interpretation of the rules governing the confidentiality of the Commission's proceedings and the publication of its findings

undermines transparency and accountability. Transparency in the workings of the Commission is crucial for public confidence in its processes and for the effectiveness of its role in promoting and protecting human rights. If the conditions under which the Commission's findings can be made public are interpreted too narrowly, it may prevent essential information about human rights abuses and the responses to them from reaching the broader public, civil society organizations, and even other states that could take action. This lack of transparency could stifle informed public debate on human rights issues, diminish the pressure on states to uphold their commitments under the African Charter and negatively affect the development of human rights jurisprudence in Africa by restricting the public's ability to submit amicus curiae briefs in respect of communications that are before the African Commission.

- j. Moreover, an overly restrictive interpretation impedes the right to information and, in turn, affects the rights to freedom of expression and to express and disseminate opinions. The right to information is a cornerstone of democratic societies, enabling individuals to make informed decisions and to hold their governments accountable. Limiting the dissemination of the Commission's findings could deprive individuals and organizations of the information necessary to advocate for policy changes, to challenge violations, and to engage in meaningful public discourse on human rights matters.
- k. Finally, such a restrictive approach hinders the effectiveness of the African Commission's protective mandate. The ability of the Commission to influence state behaviour and improve human rights conditions on the ground partly depends on its capacity to engage with a wide audience, including governments, non-governmental organizations, and the general public. By constraining the flow of information about its activities and findings, the Commission's potential to galvanize action, foster cooperation, and facilitate the implementation of its recommendations is significantly reduced.

1.3. Conclusion

As a consequence, the African Commission's current interpretation of the confidentiality principle of the African Charter can indeed be seen as a violation of the Right to Information and Freedom of Expression of the African Charter, especially considering the broad scope of this right as defined in more detail through the Declaration.

2. How do communication procedures differ between the African Commission on Human and Peoples' Rights and other national mechanisms in terms of balancing publicity and secrecy?

2.1. Communication Procedures utilized by the African Commission:

- a. The African Commission is empowered in terms of the African Charter to receive communications brought forward by a state that raises a complaint pertaining to another state and its potential violation of the African Charter. The African Commission may also receive communications from other entities besides a state (such as an individual or an organisation) alleging that a specific state is in violation of rights in the African Charter. This ability to receive communications stems from the African Commission's function to protect the freedoms and rights provided in the African Charter.
- b. In terms of process, a communication is directed to the Secretariat of the African Commission, based in Banjul, Gambia. The processes to be followed in terms of the two communication forms are as follows:
 - i. Articles 47 to 48 of the African Charter govern communications wherein one state alleges (the "Alleging State") that another state has violated a provision of the African Charter (the "Violating State"). The African Commission is only empowered to hear this communication if the Alleging State and Violating State have attempted to settle the dispute and such a settlement has not been reached within a three-month timeframe. However, article 49 of the African Charter allows the Alleging State to refer an alleged human rights violation directly to the African Commission in respect of a Violating State, should the Alleging State choose not to enter into negotiations with the Violating State. Under both of these communication procedures:
 - A. the Alleging State must notify the Violating State of the communication. This notification is not a role that is assumed by the African Commission;
 - B. the African Commission can only review and consider the communication after it determines that all local remedies have been utilised or, it is apparent that the usage of these remedies would be time consuming;

- C. the African Commission may request both the Alleging and Violating States to provide further information, oral or written presentations pertaining to the communications; and
 - D. the African Commission must explore all appropriate remedies to ascertain a solution and subsequently, the African Commission must prepare a report wherein it lists useful recommendations to solve the issue at hand;
- c. Articles 55 -59 of the African Charter govern communications submitted by individuals or organisations. These communications involve three stages being, Seizure, Admissibility and Merits:
- i. *Seizure:*
 - A. once the African Commission receives a communication, it must create a summary of the same which is distributed to all of the relevant commissioners of the African Commission (the "Commissioners"). Further, the African Commission must issue a summary of the complaint and an acknowledgement of the same to the complainant;
 - B. members of the African Commission must convene to decide whether or not the complaint constitutes a prima facie violation of the African Charter and whether the complaint has been submitted correctly according to Article 55 of the African Charter. However, it is important to note, if the majority of the African Commission consider the complaint to be valid, the same will be considered despite the minority deciding otherwise;
 - C. the majority of the Commissioners must then decide if the communication must be seized. Once the communication is seized, the complainant and the violating state will be informed that the matter will be considered on admissibility within three months from the notice thereof;
 - ii. *Admissibility:*
 - A. The admissibility of a complaint is analysed against 7 conditions namely:
 1. the communication must indicate the name of the author;
 2. the communication must state that a provision of the African Charter has been violated;
 3. the communication must not make use of explicit or insulting language;
 4. the communication cannot be based solely on information retrieved from mass media;

5. the communication must be sent to the African Commission only after all remedies to resolve the same have been exhausted (save if resorting to these remedies will cause undue delay in resolving the problem);
 6. the communication must be submitted to the African Commission within a reasonable time from when the local remedies are exhausted; and
 7. the communication cannot be in respect of matters that have already been settled in accordance with the African Charter, the African Charter of the United Nations or the Constitutive Act of the African Union;
- B. if a single condition above is not met, the complaint will be considered inadmissible and will not be explored further by the African Commission;
- iii. Merits:*
- A. after a complaint has been declared admissible, the African Commission will examine the complaint in more depth and consider the response made by the Violating State. The African Commission considers a complaint within the context of the principles of the African Charter and other international human rights norms;
 - B. the Secretariat of the African Commission drafts a proposed decision which guides the Commissioners of the African Commission in making their final decision;
 - C. the African Commission will investigate all facts, submissions and will utilize any appropriate measure of investigation. Once both the Alleging and Violating State have put forth facts and arguments, the African Commission will determine if there has been a violation and will in turn, make recommendations to the parties involved; and
 - D. the African Commission (via the Commissioners) submits the final decision and the parties involved may be invited to make written or oral presentations to the African Commission after a final decision has been issued.
- d. The goal is to achieve a friendly settlement wherein a report is generated by the African Commission detailing the facts, merits and recommendations pertaining to the case. However, if a friendly settlement is not reached, the Commissioners will escalate the matter within the African Commission for a final decision to be made.

- e. It is important to note that the recommendations are not legally binding on the parties involved. There are also no implementation procedures that have been established for the African Commission to follow up and enforce its recommendations issued pursuant to a complaint.

2.2. Impact of African Commission's Analysis of Article 59 and the Impact on its Communication Procedures

- a. Article 59 of the African Charter states that measures pertaining to Chapter 111 (i.e. the African Commission communication procedures) will remain confidential until the Assembly of Heads of State and Government decide otherwise. All decisions taken by African Commission will only be publicized upon the approval of the Assembly. All facts, submissions and information pertaining to the proceedings taking place in relation to the pending complaint are not available to the public.
- b. No pleadings, submissions, recommendations or factual information pertaining to the communication process will be made publicly available without the approval of the Assembly and such approval is only granted once the matter is closed and not in real time whilst the dispute is ongoing.

2.3. Comparative Analysis with a focus on Confidentiality within the Communication Procedures

- a. The South African Human Rights Commission:
 - i. The South African Human Rights Commission ("SAHRC") has established complaints handling procedures to ensure that it fulfils its mandate of addressing human rights grievances. The complaints lodging process is much less formalistic than that of African Commission. The process involves, in summary, the following steps:
 - A. a complaint can be lodged by any individual;
 - B. a complaint can be sent to the SAHRC via email, to an official at any of the Nine Provincial Offices or the SAHRC may be contacted via a complaints hotline;
 - C. a complainant must either fill out a complaint form (as provided by the SAHRC) or they may verbally answer the questions posted by the SAHRC, either telephonically or in the presence of an official of the SAHRC.
 - ii. Any complaint will be considered by the SAHRC except for a complaint that:
 - A. is already being heard before a South African court;

- B. the complaint has been resolved through settlement;
 - C. the complaint is anonymous (however, this condition may be waived by the SAHRC); or
 - D. the complaint is abusive, frivolous, vexatious, non – sensical or not in compliance with the South African Human Rights Commission Act 40 Of 2013.
- iii. Ultimately, the SAHRC allows for a flexible complaint mechanism wherein the Provincial Manager of the SAHRC may take discretionary measures to hear any complaint if it is just and reasonable to do so with considerations of the relief requested, the evidence available and the seriousness of the human rights violation as well as will consider any reasonable factor pertinent to the complaint.
 - iv. The SAHRC does not prescribe any confidentiality restrictions on a complaint. However, the SAHRC will ensure a complaint is confidential only if the complainant requests the same or if the complainant is a child or a person with a mental health affliction.
 - v. The SAHRC releases all reports, investigative findings and recommendations (which includes information of the parties involved, the nature of the complaint and the findings as well as course of potential action going forward) that it has either developed due to receiving a complaint or has developed on their own accord on their website (click on link here). The SAHRC notes that one of its achievements pertains to conducting public enquiries into human rights violations.
 - vi. Not only does the SAHRC release reports on their findings and investigations but they continuously update their website with newsletters and articles informing the public of complaints that have been raised with the SAHRC and the ongoing proceedings/actions that have been undertaken by the SAHRC.
 - vii. The SAHRC's communication procedures, contrasted against the mechanisms utilised by the African Commission, highlights that the SAHRC utilizes a more flexible approach that: (a) allows confidentiality when necessary; and (b) ensures the public is made aware of its work and its findings in a transparent and reasonable manner. Whilst the full reports pertaining to a communication are

only released at the end of negotiations and discussions, the SAHRC maintains an open line of communication during the proceedings to inform the public of the basic facts and processes pertaining to major communications whose effects thereof, would be of interest to the public. The SAHRC also makes an effort to publish latest court cases pertaining to various complaints and alleged human rights violations.

- b. Queensland Human Rights Commission (Australia):
 - i. The Queensland Human Rights Commission ("QHRC") provides for a communication procedure where any individual or organisation can submit a complaint pertaining to an alleged human rights violation.
 - ii. The QHRC will assess the complaint to determine if there is a violation of the various human rights legislation of Australia and then will either accept or reject the complaint. If the complaint is accepted, the QHRC will attempt to resolve the complaint via a conciliation process, failing which, the complaint is forwarded to an Australian Court for further assistance.
 - iii. The QHRC, similarly to the SAHRC, provides updates on unresolved complaints, the facts pertaining there to and the actions taken by the QHRC to resolve the complaint. The QHRC highlights that the purpose of this is to ensure the public is aware of the actions taken by the QHRC and to ensure that there is open dialogue pertaining to the alleged violation of human rights.
 - iv. Whilst the QHRC promotes open dialogue pertaining to the alleged violation of human rights and posts reports on facts surrounding unresolved complaints, it does not publish reports on resolved complaints nor has a platform that ensures there are continuous updates made available to the public.

2.4. Conclusion

- a. The African Commission has interpreted Article 59 of the African Charter in a manner that provides confidentiality pertaining to the communication procedure. The African Commission will only publish reports pertaining to the facts, submissions and outcomes of a complaint filtered through the communication procedure, once the complaint has been resolved and the approval of the Assembly has been granted to make the publication.

- b. Contrasted against the African Commission, the SAHRC promotes a more transparent communication procedure and provides regular news updates, court cases and reports on ongoing complaints that are being addressed by the committee. The SAHRC does however, respect the need for confidentiality if a complainant specifically requests same or if the complainant is a minor or a person suffering with a mental health ailment. This ensures that the public is made aware of ongoing complaints addressed to the SAHRC and the proceedings pertaining thereto, but the confidentiality of vulnerable parties is preserved.
- c. Turning to the communication procedures of the QHRC, there is a degree of transparency (more than that provided by the African Commission's procedures) in the sense that the QHRC has openly recognised the need for public awareness and discussion pertaining to alleged human rights violations and noted that the public should be made aware of reports pertaining to unresolved complaints.
- d. Although the standards for balancing publicity and confidentiality in complaint procedures that can be brought by individuals cannot be readily transferred to such proceedings that can only be initiated by states (see already above "1.1., lit. f"), in reviewing the communication procedures offered by the SAHRC and the QHRC, it nevertheless becomes obvious that the African Commission could implement further measures that ensures their communication procedure is more transparent and facilitates public dialogue.

3. What safeguards exist in different national/ regional/international mechanisms to ensure access to information and fair and public hearings, and how does the African Commission's approach under Article 59(1) of the African Charter contrast with these practices?

3.1. United Nations Mechanisms

- a. The UN Human Rights Committee foresees in general publicity of their rules of procedure:¹⁷

17 UN Doc. CCPR/C/3/Rev.12.

- i. In principle, the summary records of the meetings shall be public (Rules 35, 38 of the rules of procedure). However, the Committee may restrict that upon their discretion by holding the meeting in private (Rule 35). Restricting access to records of public hearings is possible only “in exceptional circumstances” (Rule 38).
 - ii. Communications by one State Party alleging the violation of the International Covenant on Civil and Political Rights by another State Party will be considered in closed meetings. It is upon the discretion of the Committee after consulting the State parties concerned to issue a communiqué to the media on these meetings (Rule 81).
 - iii. Communications by an individual person alleging the violation of the International Covenant on Civil and Political Rights by a State Party under the Optional Protocol are examined in closed sessions (Rule 111 (1)). The Committee may even instruct the parties to keep the submissions made in the proceedings confidential (Rule 111 (4)). However, the decisions shall be made public (Rule 111 (6))
 - iv. The decisions, called “concluding observations” shall be made public (Rule 71 (1)).
- b. 190 States are Parties of the UN Convention against Corruption (“UNCAC”) as adopted by the UN General Assembly on 31 October 2003.¹⁸ Article 13(1)(b) of UNCAC ensures that the public has access to information through information and communication technology such as online platforms, which include details regarding:
- i. means by which requests may be submitted (in writing, via Internet, by telephone);
 - ii. the types of bodies required to publish information;
 - iii. the scope of the information published;
 - iv. any information that must be submitted by the requester as part of the request for information;

18 UNCAC Signature and Ratification Status (unodc.org), accessed on 30. July 2024.

- v. costs charged to submit a request
 - vi. applicable time limits within which the Government must respond to the request;
 - vii. grounds on which a request by a member of the public for information may be denied;
 - viii. description of staff or entity responsible for administering access to information requests;
 - ix. description of steps taken to ensure that existing laws, regulations, policies and procedures regarding access to information are widely known and accessible to the public; and
 - x. description of the means by which the public is informed of how to access information.
- c. Furthermore, on 25 June 1998 in the Danish city of Aarhus, representatives of 46 countries and the European Union signed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention. Although the Convention is essentially limited to the environmental field, it provided the first comprehensive international set of rules on access to information held by public authorities. As well as regulating which information must be freely accessible, it stipulates that the procedures for obtaining access to that information must be transparent and comprehensible. Public authorities must make information easily accessible to everyone, without delay and without discrimination in respect of the nationality or other characteristics of the applicant.

3.2. South African Mechanisms

- a. South Africa has adopted the Promotion of Access to Information Act which ensures that people can exercise their constitutional right of access to any information that is required for the exercise or protection of any right and is held by the State and any other person.
- b. The right of access to information fosters a culture of transparency and accountability in both public and private bodies, and promotes a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect their rights.

- c. A person may request access to all documentation and records held by any government department, its officials or any other public body. It does not matter when that information came into existence. This information includes:
 - i. personal records held by a government department or a public body;
 - ii. third party information or records: only with permission from the relevant third party, especially if the documents contain confidential or private information;
 - iii. information to which access is not restricted by the Promotion of Access to Information Act;
 - iv. the records of Cabinet and its committees;
 - v. records that relate to the judicial function of a court; and
 - vi. information obtained by a special tribunal that was established in terms of the law, held by a judicial officer of such a court or tribunal or held by an individual member of parliament or of a provincial legislature.
- d. It should be noted that section 34 of the Constitution of South Africa deals with the right of access to courts and provides that "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum." This provision protects individuals and ensures that decisions are open and transparent and allows for public comment and scrutiny.

3.3. German Mechanisms

- a. In Germany, the Federal Freedom of Information Act ("FOIA") came into force on 1 January 2006, granting everyone an unconditional right to inspect files and obtain information held by any federal authority or other public body of the German Federation. Due to Germany's federal structure, the Federal Freedom of Information Act is limited to federal authorities. Before the introduction of FOIA, people were still entitled to access certain information under existing legislation such as the Administrative Procedure Act, which guarantees the parties involved in an administrative procedure the right to inspect the relevant files. Additional sector specific laws which complement the FOIA have since been passed and guarantee the rights of access to information for everyone. These include the Environmental Information Act, the Consumer Information Act and the Act on Access to Geographical Data. It should be noted that there are various limitations

to the FOIA, as set out in section 3 of the FOIA which state that the entitlement to access to information shall not apply:

- A. where disclosure of the information may have detrimental effects on –
 - i. international relations;
 - ii. military and other security-critical interests of the Federal Armed Forces;
 - iii. internal or external security interests;
 - iv. monitoring or supervisory tasks of the financial, competition and regulatory authorities;
 - v. matters of external financial control;
 - vi. measures to prevent illicit foreign trade; and
 - vii. the course of current judicial proceedings, a person's entitlement to a fair trial or the pursuit of investigations into criminal, administrative or disciplinary offences;
- B. where disclosure of the information may endanger public safety;
- C. where and for as long as –
 - i. the necessary confidentiality of international negotiations or
 - ii. consultations between authorities are compromised;
- D. where the information is subject to an obligation to observe secrecy or confidentiality by virtue of a statutory regulation or the general administrative regulation on the material and organisational protection of classified information, or where the information is subject to professional or special official secrecy;
- E. with regard to information obtained on a temporary basis from another public body which is not intended to form part of the authority's own files;
- F. where disclosure of the information would be capable of compromising fiscal interests of the Federal Government in trade and commerce or economic interests of the social insurance institutions;
- G. in the case of information obtained or transferred in confidence, where the third party's interest in confidential treatment still applies at the time of the application for access to the information; and

- H. with regard to the intelligence services and the authorities and other public bodies of the Federal Government, where these perform duties pursuant to Section 10, no. 3 of the Security Clearance Check Act.
- b. Similar to South African legislation, the right to have access to information is not absolute. The FOIA specifies a number of exceptions where information requests can be refused. The right to access information is independent of the domicile and nationality of the individual. Legal persons under private law and associations may also submit information requests. As a general rule, applications under the FOIA do not have to be substantiated. If the request concerns the personal data, copyrights or trade secrets of third parties, however, the applicant must set out the grounds for the request so that the third party can decide whether to grant its consent and the public body can perform the required assessment. If there are indications that a third party may have a legitimate interest in denying access to the information, the authority must give that third party the opportunity to comment in writing.

3.4. Article 59(1) of the African Charter

- a. Article 59(1) of the African Charter seems to provide a different stance on the matter of access to information compared to the mechanisms aforementioned. As such, it provides that "All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide". It should be noted that Article 59(2) and (3) state the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government and that the report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.
- b. In practice, Article 59 has been interpreted to mean that while communication is pending, the only information to be revealed is to be contained in the Commission's activity reports, and this is limited to the name and number of the communication and stage at which it is (see Murray R. "Confidentiality and the implementation of the decisions of the African Commission on Human and Peoples' Rights." *African Human Rights Law Journal* 19, no. 1 (2019): 1-25).
- c. Paragraph 4(1) of the Declaration of Principles on Freedom of Expression in Africa states that public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to

clearly defined rules established by law. The Commission has a wide interpretation of the substantive provisions of the African Charter and strongly assesses Articles 60 and 61 of the African Charter, which states that the African Charter shall be interpreted in the light of international standards. It is up to Commission and its Secretariat to ensure that public documents are distributed timely and effectively.

- d. There is developing progress in the interpretation of the African Charter and the right of access to information, which is evident in a recent initiative by the Commission to make state reports for upcoming sessions available on its website. However, more can be done by the Commission to bring Article 59(1) in line with legislative mechanisms, through actively spreading information using its website and through the network of NGOs and national human rights institutions with observer status. These organisations could also help to publicise the work of the Commission if the Secretariat would supply them with the reports that have been adopted.

3.5. Conclusion

All in all, it could be shown that there are different national, regional and international mechanisms to ensure access to information and fair and public hearings that present a clear contrast to the current African Commission's approach under Article 59(1) of the African Charter. Although e.g. in Germany the principle of access to information is limited by several exemptions under the FOIA, it can still be seen that the restriction of public access to information and documents, as currently practiced by the ACHPR, is not reflected in the mechanisms examined above.

4. How do various national/regional/international bodies involve experts in ongoing communications, such as through amicus curiae submissions, and how does this compare to the African Commission's practices?

4.1. The African System

- a. The African system for the protection of human rights consists of the African Commission, which serves as a complaint and reporting mechanism, and the African Court, whose decisions are legally binding on the State Parties (the "African System").

- b. The African Commission on Human and Peoples' Rights
 - i. The African Commission relies on experts and third-party interventions in carrying out its duties, functions and tasks. It is empowered by Article 45(1) of the African Charter and Rule 100(1) of the Rules of Procedure of the African Commission to request witnesses and experts to partake in proceedings, at its initiative, as and when it deems it desirable for the case. For example, in the *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* case, which concerned the government of Nigeria's actions in the Niger Delta, where oil extraction activities led to environmental degradation and violation of the rights of the Ogoni people, the African Commission relied on expert testimonies and reports to provide crucial evidence on the link between the oil activities and violations of the Ogoni's right to health, housing, and adequate standard of living and, based on such evidence, found in favour of the Ogoni people. In the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, which concerned the displacement of the Endorois people from their ancestral land by the Kenyan government, the African Commission relied on expert reports to highlight the significance of their ancestral land for the Endorois' cultural, religious and economic practices and found that the Kenyan government violated the African Charter.
- c. The African Court on Human and Peoples' Rights
 - i. If a state has not complied or is unwilling to comply with the recommendations or provisional measures of the African Commission or the African Commission has become aware of an alleged human rights violation and deems the intervention of the African Court necessary, the African Commission may refer such cases to the African Court for adjudication. The decisions of the African Court are legally binding. Similar to the African Commission, the African Court may, at its initiative, rely on oral and written expert evidence and testimonies during its proceedings to assist it in obtaining information, clarifying the facts of the case and carrying out its tasks (see Rule 55 of the Rules of Court of the African Court on Human and Peoples' Rights).
 - ii. The African Charter places high regard on expert evidence. Article 26(2) of the Protocol to the African Charter on Human and Peoples' Rights on the

Establishment of an African Court on Human and Peoples' Rights obliges the African Court to base all of its decisions on the expert evidence it admitted. For example, the African Court, in the case of the African Commission on Human and Peoples' Rights v. Kenya, which concerned the eviction of the Ogiek people from the Mau Forest in Kenya, the African Court relied on expert testimonies from anthropologists, environmentalists, and human rights scholars to understand the Ogieks connection to and importance the land and, based on such evidence, ultimately found the eviction to violate the African Charter. The African Court ordered Kenya to take remedial measures, which included making a concerted effort to recognise and understand the Ogieks' relationship with the land. Another case where the African Court relied on expert evidence is *Mtikila v. Tanzania*, which concerned a challenge to Tanzanian laws requiring political candidates to affiliate with registered political parties. In *Mtikila v. Tanzania*, the African Court relied on expert evidence and testimony from constitutional lawyers, political scientists, and human rights activists, all of whom provided insight into the implications of the relevant laws on political participation and democratic governance. Based on the expert evidence provided, the African Court found that the laws in question violated the African Charter, specifically the rights to freedom of association and political participation.

- d. The Community Court of Justice of the Economic Community of West African States (ECOWAS) and East African Court of Justice Court (EAC)
 - i. The ECOWAS Court and EAC Court also provide for participation in proceedings before them.
 - ii. The ECOWAS Court
 - A. Article 13(4) and Article 16 of the Protocol to the ECOWAS Court read with Article 45 of the Rules of the ECOWAS Court provides that the ECOWAS Court may, in any circumstance, order any manner of judicial enquiry, summon any person, organisation or institution to carry out an enquiry or give an expert opinion, provided the ECOWAS Court show due regard to the Rules of the ECOWAS Court, which, inter alia, regulate the way and manner in which experts and parties submit evidence and the court and parties treat experts during proceedings (see the landmark case of

Hadijatou Mani Koraou v. Niger where the ECOWAS Court relied on experts to establish the prevalence of slavery in Niger; and SERAP v. Nigeria where the ECOWAS Court relied on educational experts, economists and human rights scholars to assess whether the state of Nigeria's public schooling system complied with international law standards).

iii. The EAC Court

- A. Article 60(1) of the Rules of the EAC Court provides that, at any stage of the proceedings, the EAC Court may, as and when it deems desirable, invite or grant leave to any person or body to submit any observation, evidence or testimony on any issue that it deems appropriate (see *Katabazi and 21 Others v. Secretary General of the EAC and the Attorney General of the Republic of Uganda* (2007) where the EAC Court relied on legal experts to provide insight into the implications of Uganda's decision to not release 22 individuals from detention following an order from the High Court to do so on the rule of law and judicial independence; and *African Network for Animal Welfare (ANAW) v. Attorney General of Tanzania* (2014) where environmental experts, ecologists, and conservationists provided testimonies on the potential impact of building a highway through the Serengeti on its ecosystem). However, third parties (*amicus curiae*) must detail their interest in the matter to partake in the proceedings (Article 60(2) of the Rules of the EAC Court).

4.2. *The Inter-American System*

- a. The Inter-American Commission is an autonomous organ of the Organization of American States (OAS) and, similar to the African Commission, promotes and protects human rights, observes, monitors and reports compliance with human rights laws and treaties and receives and analyses petitions and cases alleging human rights violations in states within the Americas.
- b. The Inter-American Commission is complemented and supported by the Inter-American Court similar to how the African Court complements and supports the African Commission under the African System, namely by, *inter alia*, adjudicating cases referred to it by the Inter-American Commission.
- c. The "Inter-American System" described above allows for the use of experts during proceedings.

- d. The Inter-American Commission
 - i. Article 63 of the Rules of the Inter-American Commission empowers the Inter-American Commission to request, at its initiative, any evidence and expert testimony during proceedings. Parties to a case before the Inter-American Commission may also submit evidence and expert testimony during proceedings, provided the Inter-American Commission grants it consent, which will usually be given if the evidence and expert testimonies assist the Inter-American Commission in carrying out its tasks.
 - ii. The Inter-American Commission will usually bring experts to on-site visits to member states to provide specialised knowledge on the human rights situation being investigated and will routinely consult experts during the analysis of individual petitions and cases to understand the technical aspects and complexities of the alleged human rights violations. In the case of *Maria da Penha v. Brazil*, Maria De Penha, a Brazilian woman, was severely abused by her husband (she was shot in the back by her husband while sleeping, among other things) and left permanently disabled. Despite clear evidence of her husband's abuse, the Brazilian courts took inordinately long to address the case, leading to accusations that Brazil effectively condoned gender-based violence. Relying on expert testimonies from medical practitioners and lawyers on Maria's injury and Brazil's system judicial failures, the Inter-American Commission ruled against Brazil and for Maria. The case of Maria de Penha eventually led to the enactment of the Maria de Penha Law, which strengthened protections for victims of gender-based violence.
- e. The Inter-American Court
 - i. The Inter-American Court is empowered to request and receive oral and written expert evidence and testimonies during its proceedings, at its initiative and in any circumstances, provided experts submit their curriculum vitae before submitting their testimony (see Ch. II and Ch. III of the Rules of the Inter-American Court. For example, the Inter-American Court relied on experts in "*Street Children*" (*Villagrán-Morales et al.*) v. Guatemala, which concerned a case of police brutality: five street children were abducted and tortured by Guatemalan police; one child was killed. The Inter-American Court held that Guatemala violated several human rights treaties. It came to this conclusion

based on evidence obtained by the Inter-American Commission during its investigation (the Inter-American Commission referred the matter to the Inter-American Court). The Inter-American Commission relied on forensic experts and psychologists for evidence regarding the cause of death and its impact on the victims. The case began at the Inter-American Commission which sought assistance from forensic experts and psychologists who provided testimony on the cause of death and affect on the victims. It is worth mentioning that the Inter-American Commission may request the Inter-American Court to summon other persons as witnesses and experts for referred cases, provided it does so in accordance with the Rules of the Inter-American Court.

4.3. European System

- a. The European Court, established by the Council of Europe pursuant to the European Convention, is similar to the African Court as it is tasked with adjudicating individual and state allegations of violations of human rights within its region, Europe. However, the European Court is different to African Court in that individuals and states may approach the European Court directly, while complaints to the African Commission are referred to the African Court for resolution.
- b. Experts play a significant role in the European Court, as they do in the African Court, by providing specialised knowledge and insights that assist it in understanding the facts and context of the case. Rule A1(1) of the Rules of the European Court provides that the Chamber may, at the request of a party or of its own motion, adopt any investigative measure which it considers capable of clarifying the facts of the case which includes, inter alia, inviting the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in carrying out its tasks. For example, in *McCann and Others v. United Kingdom*, which involved the killing of three IRA members British security forces in Gibraltar, the European Court relied on experts on ballistics and pathology to provide crucial evidence regarding the circumstances of the deaths and use of force by the security forces. Another example can be found in the case of *Aksu v. Turkey*. *Aksu v. Turkey* concerned the portrayal of Roma people in a dictionary and a book funded by the Turkish government. In this case, the European Court considered sociological and anthropological expert reports to assess whether the publications perpetuated harmful stereotypes and violated the applicant's rights.

- c. The European Convention and European Court also make provision for *amicus curiae*. Article 36 of the European Convention read with Article 44 of the Rules of the European Court provides that, in all cases, a state who's national is an applicant to a case may make written submissions and take part in hearings, whilst other states make written submissions and take part in hearings when it is in the interest of proper administration to do so. The case of *Lautsi v. Italy* underscores the role of *amicus curiae* in European Court proceedings, demonstrating how third-party interventions can provide valuable insights and contribute to a more comprehensive understanding of the issues. In *Lautsi v. Italy*, several European states (e.g., Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Monaco, Romania, Russia, and San Marino), non-governmental organisations (e.g., Centre for Law and Justice (ECLJ), the Greek Helsinki Monitor, Eurojuris, and the International Commission of Jurists (ICJ)), and religious organizations (e.g., *sociazione Giuristi per la Vita* (Association of Lawyers for Life) and *Zentralkomitee der deutschen Katholiken* (Central Committee of German Catholics)) all made submissions on different elements of the case. The diversity of views presented by the *amici curiae* helped the European Court appreciate the complex interplay between cultural traditions and individual rights, ultimately influencing the court's decision to uphold the presence of crucifixes in Italian public-school classrooms as being compatible with the European Convention.

4.4. Germany

- a. When it comes to the involvement of experts in ongoing communications in Germany, Section 27a of the Act on the Federal Constitutional Court regulates this for the proceedings held before the Federal Constitutional Court stating that: "[t]he Federal Constitutional Court may give expert third parties the opportunity to submit statements." In practice, the Federal Constitutional Court often invites experts to oral hearings and hearings in order to obtain their professional opinion on specific issues. These experts can come from different specialist areas, depending on which expertise is relevant to the case. The Federal Constitutional Court may also request written opinions from experts in order to obtain a sound basis for its decisions. The decision to call in experts is at the discretion of the

court and is made on a case-by-case basis. This is particularly the case in complex proceedings where special expertise is required.

- b. Germany is an active member of the Council of Europe, helping it develop a cohesive European legal space with the European Convention as the focal point and encouraging member states to adhere to the rulings of the European Court.
- c. Furthermore, Germany is signatory to many of the UN human rights conventions based on the Charter of the United Nations and the 1948 Universal Declaration of Human Rights, such as the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; and Convention on the Rights of the Child.

4.5. United Nations Mechanisms

- i. International Covenant on Civil and Political Rights (ICCPR)
 - A. The ICCPR outlines civil and political rights considered fundamental to all people, including but not limited to the right to life, freedom of speech, freedom of religion, and the right to a fair trial. States that have ratified the ICCPR must respect and protect these and other rights within their territories. The ICCPR does not have explicit provisions allowing for expert participation during cases concerning its alleged breach. However, experts frequently participate within the framework of the United Nations Human Rights Committee, a body composed of experts responsible for overseeing the implementation of the ICCPR.
 - B. In cases where parties allege violations of the ICCPR, the United Nations Human Rights Committee will rely on expert opinions and testimonies to provide their expertise on various aspects of the allegation and possible solutions. For example, legal experts and human rights activities in the case of *Ivanov v. Belarus*, which concerned allegations of violations of the right to fair trial and arbitrary detention in Belarus, provided their opinion on the independence of the Judiciary in Belarus and whether legal proceedings in Belarus complied with international standards.
 - C. The Optional Protocol to the International Covenant on Civil and Political Rights allows an indirect expert participation by enabling individuals to present their cases with the assistance of legal representation, which includes experts.

- ii. International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - A. The ICESCR focuses on economic, social, and cultural rights considered fundamental to all people, including but not limited to the right to work, education, health, and adequate standard of living (e.g., food, clothing and housing). States that have ratified the ICCPR must respect and protect these and other rights within their territories.
 - B. The ICESCR does not have a formal mechanism to adjudicate alleged violations of its provisions but relies on the Committee on Economic, Social and Cultural Rights, a body composed of experts responsible for overseeing the implementation of the ICESCR, to monitor state parties' reports on their compliance with the covenant and issue findings and recommendations based on its review and review and consider individual complaints lodged pursuant to the Optional Protocol to the ICESCR, both of which requires a detailed analysis and consideration of the evidence, engagement with relevant stakeholders, and reliance on expert testimonies on various issues (see Article 16 and 17 of the ICESCR and Article 11 to 14 of the Optional Protocol to the ICESCR, which make provision for, and even encourage, the use of experts and third parties in carrying out the Committee's monitoring and reporting operations).
- iii. United Nations Convention on the Rights of the Child (CRC)
 - A. The CRC is the most widely ratified human rights treaty, which sets out civil, political, economic, social, health and cultural rights
 - B. The CRC established the Committee on the Rights of the Child, which consists of experts who monitor the implementation of the CRC by member states. The Committee on the Rights of the Child monitors compliance with the CRC by member states, reviews reports submitted by member states regarding their compliance with the CRC, issues observations and recommendations to member states, and considers complaints raised by children relating to alleged violations of the CRC.
 - C. The CRC does not make explicit provision for the use of experts and amicus curiae intervention. However, the CRC and its framework, with the Committee on the Rights of the Child at its centre, ensure that experts and third parties make submissions and intervene in matters. For example, the Committee on

the Rights of the Child, in assessing the detention conditions in a children's refugee camp, found the conditions deplorable and inconsistent with provisions of the CRC and relied on the submissions of 31 academics in arriving at its conclusion (see L.H. et al, and A.F (authors) and S.H.M.A. et al. (victims) v France).

4.6. Conclusion

It could be shown that in the African System as well as in the Inter-American and European System experts can be involved in ongoing communications. This is in principle comparable to the African Commission's practice to also rely on experts during proceedings.

5. How do various regional bodies support third party involvement in ongoing communications, and how does this compare to the African Commission's practices?

5.1. Third Party Involvement

- i. Third parties, including civil society organisations (CSOs), are often pivotal in furthering human rights and driving legal reforms to address human rights violations through national, regional and international mechanisms. Granting third-parties access to information fosters essential collaboration with parties on legal arguments or evidence, thereby strengthening cases for both current and future litigation. The ACHPR's current interpretation of Article 59 imposes an unjust limitation that restricts public access to information related to the communications of the African Commission. Consequently, CSOs and other interested parties struggle to obtain necessary information, which also hinders the submission of amicus briefs. This restriction undermines transparency and obstructs the pursuit of justice and legal reform. This contrasts with other regional systems which support third party involvement.

5.2. Third Party Involvement at the European Court

- i. The European Court has mechanisms for accepting amicus briefs and other forms of third-party input. Article 36 § 2 of the European Convention on Human Rights (ECHR) allows for third-party intervention in cases before the Court. This

procedural mechanism enables the Court to gather insights from States and other entities not directly involved in a case, thereby broadening the scope of information and perspectives on the issues at hand. The main role of these third parties is to provide impartial and objective legal or factual points that can aid the Court in reaching a well-informed decision. These third parties are not permitted to support any party directly, make procedural requests, seek remedies, engage in settlement negotiations, or influence the referral of a case to the Grand Chamber. All submissions from third parties are included in the case file and may be referenced in the Court's decision or judgment, ensuring that the intervention contributes to a more comprehensive adjudication process.

- ii. The possibility of intervening as a third party under Article 36 § 2 of the Convention is open to “any [High] Contracting Party which is not a party to the proceedings” or to “any person concerned who is not the applicant.” This includes two categories: (a) “*amici curiae*,” which can encompass non-governmental organizations, academics, private individuals, business enterprises, other international organizations, other bodies of the Council of Europe, independent national human-rights institutions, and similar entities; and (b) “interested third parties,” which include individuals whose legal rights may be affected, albeit indirectly, if the Court finds a violation of the Convention or its Protocols. Unlike intervention under Article 36 § 1 by the contracting State of the nationality of the applicant(s), intervention under Article 36 § 2 is not automatic but is at the Court's discretion and only permitted if it serves the “interest[s] of the proper administration of justice.” Importantly, a potential third party does not need to have a direct legal interest in the case's outcome, differing from requirements in some other jurisdictions.
- iii. The case law presented in the *Magyar Helsinki Bizottság v. Hungary* judgment emphasized that the information requested from the police by the applicant NGO was essential for completing its study on the functioning of the public defenders' system. This study was conducted in the NGO's capacity as a human rights organization and aimed at contributing to the public discourse on a matter of significant public interest. The Court determined that by denying the applicant access to the requested information, the domestic authorities had severely impaired the NGO's ability to exercise its freedom to receive and impart information, striking at the core of its Article 10 of the European Convention on Human Rights.

The Court concluded that granting the NGO's request would not have infringed upon the public defenders' privacy rights, as the requested information, although personal, was already within the public domain.

- iv. Moreover, the Court recognizes the important role played by individuals, journalists, and NGOs involved in activities related to public interest matters. These factors are crucial in obtaining information that serves the public good. These principles underline the vital importance of access to information as a fundamental aspect of freedom to information, thereby reinforcing democratic participation.

5.3. Third Party Involvement under the Inter-American System

- i. Amicus briefs, though not explicitly mentioned in the American Convention or the Court's Rules of Procedure, began to be considered during advisory opinions. Under Article 64(1) of the American Convention on Human Rights (ACHR), the Inter-American Court of Human Rights (IACtHR, "the Court") can receive requests for advisory opinions from member states of the Organization of American States (OAS). These requests must pertain to questions regarding the interpretation of the Convention or other international treaties concerning human rights in the Americas. In fulfilling its role of assisting states, the Court's Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. The Court's receptiveness to amicus briefs from civil society organizations and individuals aligns with the broad scope of its advisory function, recognizing the significant role of civil society in aiding the tribunal to fulfill its advisory jurisdiction's core purpose.

5.4. Third Party Involvement at the African Commission

- i. The current interpretation of Article 59(1) of the African Charter hampers the participation of interested experts or NGOs in ongoing communications and the submission of amicus briefs due to the opacity surrounding communication information. Rule 104 of the ACHPR Rules of Procedure 2020 provides that third parties are allowed to intervene in a pending communications either by invitation or upon request, serving as amicus curiae, to aid the Commission in determining a factual or legal issues. Although Rule 104 permits the invitation of amicus curiae contributions, sub-section 3 requires the authors of the request to indicate the relevant communication(s) and the contribution the proposed amicus- an imperative rendered unfeasible due to the unavailability of such information to

the public. Thus, the Rule fails to rectify the absence of information crucial for experts and stakeholders to formulate informed briefs aligned with pertinent matters.

- ii. Additionally, according to Rule 90 of the Rules of procedures of the ACHPR, the Commission's deliberations on communications shall occur in private, and all facets of these discussions are to remain confidential. Furthermore, Rule 102 stipulates that hearings before the Commission shall be held in private and only parties to the communication, their legal representatives, witnesses, experts and third parties are allowed to attend the hearing, provided they abide with article 59(1) of the African Charter. This approach represents a significant deviation from broadly accepted standards on the openness of judicial proceedings.

5.5. The repercussions of the ACHPR's stringent reading of Article 59(1) include hindrances to legal mobilization and the capacity of individuals and NGOs to engage in strategic litigation for societal change as substantive information on communications are kept a secret from the public. The strict confidentiality also impedes advocacy during protracted litigation, particularly because communications before the ACHPR can take years to conclude. In such instances, advocacy fuelled by reliable data is pivotal in driving social change through ongoing engagement with rights and issues broached before the ACHPR, potentially catalysing legal or policy reform independently of ACHPR decisions.

5.6. The African Commission can make progressive modifications to its interpretation of Article 59(1) by drawing on the experiences and provisions of regional systems. These systems have established mechanisms for third-party involvement, particularly through amicus curiae briefs, which have significantly enhanced the comprehensiveness and fairness of their adjudicatory processes.

6. How do the Inter-American Commission on Human Rights and Court, the African Court on Human and Peoples' Rights, the European Court of Human Rights, the ECOWAS Community Court of Justice, the East African Court of Justice, and other relevant sub-regional courts deal with the issue of the confidentiality of applications and activities?

6.1. Inter-American Commission on Human Rights and Court

- a. In terms of the Rule of Procedure of the Inter-American Court of Human Rights
 - i. Article 15. Hearings, deliberations, and decisions: The court shall hold hearings when it deems it appropriate to do so. Hearings shall be public, unless the Tribunal deems it appropriate that they be private.
 - ii. Article 32. Publication of judgements and other decisions: The court shall make public its judgments, orders, opinions and other decisions, including separate opinions, dissenting or concurring whenever they fulfil the requirements set out in Article 65(2) (i.e., the requirements for the contents of a judgement).
 - iii. Article 9. Oath: The secretary, deputy secretary, interpreter shall undertake, inter alia, to respect the confidential of the facts that come to their attention.
- b. The Inter-American Court of Human Rights promotes public access throughout the lifespan of a case from application to hearings and the ultimate publication of judgments. However, as shown above, the court balances the publicity of the proceedings with a level confidentiality where the Tribunal deems it appropriate. The Rule of Procedure of the Inter-American Court of Human Rights do not prescribe the parameters within which the Tribunal ought to exercise such discretion (i.e., taking into account the wishes of the parties concerned and/or the broader interests of justice).

6.2. European Court of Human Rights

- a. In terms of the Rules of Court of the European Court of Human Rights
 - i. Rule 33. Public character of documents

- A. All documents deposited with the Registry by the parties or by any third party in connection with an application, except those deposited within the framework of friendly-settlement negotiations as provided for in Rule 62, shall be accessible to the public in accordance with arrangements determined by the Registrar, unless the President of the Chamber, for the reasons set out in paragraph 5.2(a)(i)(B) below, decides otherwise, either of his or her own motion or at the request of a party or any other person concerned.
 - B. Public access to a document or to any part of it may be restricted in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties or of any person concerned so require, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice.
 - C. Any request for confidentiality made under paragraph 5.2(a)(i)(A) above must include reasons and specify whether it is requested that all or part of the documents be inaccessible to the public.
 - D. Decisions and judgments given by a Chamber shall be accessible to the public. Decisions and judgments given by a Committee, including decisions covered by the proviso to Rule 53 § 5, shall be accessible to the public. The Court shall periodically make accessible to the public general information about decisions taken by single-judge formations pursuant to Rule 52A § 1 and by Committees in application of Rule 53 § 5.
- ii. Rule 63. Public character of hearings
- A. Hearings shall be public unless, in accordance with paragraph 5.2(a)(ii)(B) below, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.
 - B. The press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.
 - C. Any request for a hearing to be held in camera made under paragraph 1 of this Rule must include reasons and specify whether it concerns all or only part of the hearing.

- iii. Rule 78. Publication of judgments and other documents
 - A. In accordance with Article 44 § 3 of the Convention, final judgments of the Court shall be published, under the responsibility of the Registrar, in an appropriate form.
 - B. The Registrar shall in addition be responsible for the publication of official reports of selected judgments and decisions and of any document which the President of the Court considers it useful to publish.
- b. In terms of the European Convention on Human Rights
 - i. Generally, the European Court of Human Rights is fundamentally bound by the provisions stated in the European Convention on Human Rights as its core mandate is to enforce and interpret the Convention. Considering that the Court was established under the Convention to ensure the observance of the engagements undertaken by the High Contracting Parties (see Article 19 of the European Convention on Human Rights), it cannot operate outside the scope of the Convention – neither in its jurisprudence, nor in procedural terms.
 - ii. Article 8 of the European Convention on Human Rights strongly supports the principle of confidentiality. This article states in its para. 1 that “[e]veryone has the right to respect for his private and family life, his home and his correspondence” and makes it clear in its para. 2 that in principle “[t]here shall be no interference by a public authority with the exercise of this right”. This right also influences the initial phase of confidentiality in the application process to the ECHR. It acknowledges that certain details and aspects of cases may be sensitive, and that the disclosure of such information could potentially harm the individuals involved or violate their privacy.
 - iii. However, irrespective of this it should be noted that “even where the President of the Court grants anonymity, the applicant’s identity will be revealed to the respondent government if the case is communicated to them for their observations, since at that stage the entire application will be transmitted to the respondent government concerned”¹⁹. The reason for this is that sending

19 The European Court of Human Rights – Questions & Answers for Lawyers, p. 23, para. 4.1; The European Court of Human Rights: Questions & Answers for Lawyers (coe.int), accessed on 4 June 2024.

the whole application to the government affected by the complaint ensures a fair and efficient administration of justice in accordance with the European Convention on Human Rights. In particular, this applies to Article 6 ("Right to a fair trial") and Article 13 ("Right to an effective remedy") of the Convention. The broad right to a fair trial as enshrined in Article 6 of the Convention includes the principle of equality of arms as part of it.²⁰ This again requires that both the applicant and the respondent government have a fair opportunity to present their case, including access to all evidence and arguments brought before the Court. By providing the respondent government with the whole application, the Court ensures that the government is fully informed of the allegations and evidence against it, thereby enabling it to prepare an adequate and informed defense.

In close connection with this Article 13 of the Convention guarantees the right to an effective remedy for alleged violations of the rights and freedoms set forth in the Convention. For the Court to provide such a remedy, it must ensure that the case is thoroughly examined. This requires full participation from both parties, necessitating that the respondent government has complete information about the case brought against it. Lastly, sending out the application to the concerned government also ensures a comprehensive case assessment and procedural efficiency, as this enables the Court to make a fair and informed judgment considering all aspects of the case and helps streamlining the proceedings by enabling the government to immediately start preparing its observations or defense.

- c. Both, the Inter-American Court of Human Rights and the European Court of Human Rights basically promote public access throughout the lifespan of a case. However, both courts can also balance the publicity of the proceedings with a level confidentiality where the interest of the parties or the broader interests of justice require privity of proceedings.

20 Harrendorf / König / Voigt, in: Meyer-Ladewig / Nettesheim / von Raumer, EMRK Europäische Menschenrechtskonvention, 5th Ed. 2023, Article 6, recital 117; quoted from beck-online, accessed on 6 June 2024.

6.3. African Court on Human and Peoples' Rights

- a. In terms of the African Court on Human and Peoples' Rights – Rules of Court:
 - i. Rule 41: Content of an application in contentious cases
 - A. An Applicant, who does not want his identity to be disclosed to the public, shall make a request to the Court in writing and give reasons why his identity should not be disclosed.
 - B. In any instance where an Applicant is also the victim of a human rights violation and requests that his identity be kept anonymous, the Court will disclose his identity to the respondent and not to the public.
- b. In terms of the African Charter:
 - i. Article 59: All measures taken within the provisions of the present Chapter shall remain confidential until the Assembly of Heads of State and Government shall otherwise decide.
- c. In terms of the African Court on Human and Peoples' Rights – Rules of Court:
 - i. Rule 64: Amicable Settlement: Any negotiations with a view to reaching an amicable settlement shall be confidential and without prejudice to the parties' observations in the proceedings before the Court. No written or oral communication and no offer or concession made as part of such negotiations shall be mentioned or referred to in the proceedings before the Court.
 - ii. Rule 75: Delivery of Decisions: Delivery of the decisions of the Court shall be in public, or in exceptional circumstances, in a virtual manner, due notice having been given to the parties.
 - iii. Rule 76: Publication of Decisions: Decisions of the Court shall be published in accordance with Rule 21(2) (i), under the authority of the Registrar.
 - iv. Chapter 1 Members of Court: Each judge, registrar, and interpreter or translator is required to make an oath/solemn declaration to preserve the confidentiality of the information disclosed to each of them by way of deliberations, access to information and/or any other exercise of their duties.
 - v. Chapter V Deliberations and Decisions: The deliberations of the court shall be held in camera and shall remain confidential.
- d. As discussed in the earlier portions of this memorandum, Article 59 over-extends

the confidentiality principles to the entirety of the courts' proceedings. The rules of the court uphold the courts' interpretation of Article 59 in the various ways that it upholds the discretion of the Registrar to publicise decisions of the court. When compared to the Inter-American Court of Human Rights and the European Court of Human Rights, the African Court on Human and Peoples' Rights drastically restricts the ability of the public to engage with the proceedings of the court and interact or challenge the decisions of the court.

6.4. ECOWAS Community Court of Justice

- a. In terms of Article 14: Sittings of Court of the Protocol on the ECOWAS Community Court of Justice
 - i. Article 14: Sittings of Court: sittings of the court shall be public. The Court may, however, sit in camera at the request of one of the parties or for reasons which only the Court may determine.
 - ii. Article 19: Decisions of the Court: Decisions of the Court shall be read in open court and shall state the reasons on which they are based. Subject to the provisions on review contained in this Protocol, such decisions shall be final and immediately enforceable.
- b. In addition to the official website of the ECOWAS Community Court of Justice (available here) contains a link to the decisions of the court which are accessible by the public.
- c. The Protocol on the ECOWAS Community Court of Justice provides limited guidance on the confidentiality of applications and activities of the court. Practically, it is not clear to what extent the application process is subject to confidentiality.

6.5. East African Court of Justice

In terms of East African Court of Justice Rules of Procedure 2019:

- a. Fifth Schedule: Guidelines for Mediation (Rule 63(1)):
 - i. All communications at a mediation session and the mediator's notes and records shall be deemed to be without prejudice. The parties or their representatives shall sign an agreement of confidentiality in accordance with form A of the Fifth Schedule.
 - ii. In terms of the Confidentiality Agreement attached as form A of the Fifth Schedule the parties (i.e., the applicant/claimant and the respondent) agree, inter alia:

- A. to the strict confidentiality of their mediation;
 - B. that mediation discussions, material, correspondence, any draft resolutions and any unsigned mediated agreement shall not be admissible in any court of proceeding or other contested proceeding;
 - C. any party to the agreement may obtain an injunction to prevent the disclosure of any confidential information of the agreement;
 - D. only an agreement signed by all parties may be admissible. The participants further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the participants and mediator as settlement negotiations; and
 - E. the parties further agree that any meetings between the mediator and an individual participant in caucus shall be confidential between that party and the mediator, except to the extent that the participant specifically authorizes the mediator to share information in joint mediation sessions.
- b. Section XIV: Proceedings: At the close of the hearing the court shall, unless judgment is delivered forthwith, adjourn for its deliberation which in all cases shall be held in camera and shall remain confidential.
 - c. In addition to the official website of the East African Court of Justice **(available here)** contains a link to the decisions of the court which are accessible by the public.
 - d. The East African Court of Justice creates confidentiality of proceedings through contract (i.e., by the parties entering into a Confidentiality Agreement). The Confidentiality Agreement does not contain enforcement provisions nor does it set out the consequences for breach. We assume that proceedings may not commence without the parties signing a Confidentiality Agreement, however, without any practical enforcement mechanisms or consequences for breach the efficacy of the Confidentiality Agreement is questionable.

6.6. Conclusion

To sum it up, it could be shown that there are different approaches on how the various courts and institutions examined in this memorandum deal with the issue of the confidentiality of applications and activities. All of the Courts examined above provide that the fundamental principle of publicity may be waived under certain circumstances if there are legitimate interests in confidentiality on the other side.

7. Recommendations

7.1. *The following recommendations should be considered:*

- i. The African Commission must urgently reform its interpretation of Article 59(1) to align with the principles and practices established by national, regional and international human rights systems discussed in this document.
- ii. The African Commission should adopt a default position of openness, wherein restrictions are exceptions and must be narrowly defined and justified.
- iii. A good practice the Commission should incorporate is establishing a narrow public interest test in the interpretation of confidentiality exceptions, ensuring information remains confidential only if the harm of disclosure outweighs the public interest. Requiring specific and concrete assessments of harm in refusing access to documents would ensure detailed justifications for any refusal to disclose information, based on realistic and foreseeable risks rather than hypothetical ones; which would reinforce confidentiality not being used as a blanket excuse to deny access.
- iv. In a situation where access to information is denied, there should be clear mechanisms for individuals and organizations to challenge or appeal denials of access to information, ensuring accountability and the possibility of redress.
- v. To facilitate fair litigation and legal reform the Commission must allow the submission of amicus curiae briefs by NGOs, CSOs, academics, and other interested parties.
- vi. To achieve these reforms, the African Commission should implement programs that actively engage the public, similar to the development of the Model Inter-American Law 2.0 on Access to Public Information. The Department of International Law (DDI) conducted extensive consultations with guarantor bodies, legislators, academics, civil society, and other social actors, supported by the Transparency and Access to Information Network and the European Union Cooperation Program with Latin America.

Schedule 1

Definitions

Unless the context otherwise requires, the following definitions shall apply throughout this Memorandum:

"African Charter"	African Charter on Human and Peoples' Rights
"African Commission"	African Commission on Human and Peoples' Rights
"African Court"	African Court on Human and Peoples' Rights
"CRC"	Convention on the Rights of the Child
"DDI"	Department of International Law
"EAC Court"	East African Court of Justice
"EAC"	East African Community
"ECOWAS Court"	Economic Community of West African States Community Court of Justice
"ECOWAS"	Economic Community of West African States
"European Convention"	European Convention on Human Rights
"European Court"	European Court of Human Rights
"FOIA"	The Federal Freedom of Information Act
"ICCPR"	International Covenant on Civil and Political Rights
"ICESCR"	International Covenant on Economic, Social, and Cultural Rights
"Inter-American Commission"	Inter-American Commission on Human Rights
"Inter-American Court"	Inter-American Court on Human Rights
"NGOs"	Non-Governmental Organisations
"Optional Protocol to the ICESCR"	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
"Protocol to the ECOWAS Court"	Protocol to the Community Court of Justice of the Economic Community of West African States
"Rules of Procedure of the African Commission"	Rules of Procedure of the African Commission on Human and Peoples' Rights
"Rules of the EAC Court"	East African Court of Justice Rules of Procedure

"Rules of the European Court"	Rules of Court of the European Court on Human Rights
"Rules of the Inter-American Commission"	Rules of Procedure of the Inter-American Commission on Human Rights
"Rules of the Inter-American Court"	Rules of Procedure of the Inter-American Court of Human Rights
"South Africa"	Republic of South Africa
"UN"	United Nations
"UNCAC"	United Nations Convention Against Corruption
"Vance Center"	Cyrus R. Vance Center for International Justice

Schedule 2

References

Part 1 International treaties and legislation,

1. African Charter on Human and Peoples' Rights
2. African Court on Human and Peoples' Rights – Rules of Court
3. American Convention on Human Rights
4. European Convention on Human Rights
5. Rules of Court of the European Court on Human Rights
6. Rules of Procedures of the African Commission on Human and Peoples' Rights
7. Rules of Procedure of the Inter-American Commission on Human Rights
8. Rules of Procedure of the Inter-American Court of Human Rights

Part 2 Publications (e.g. articles, books/book chapters, etc)

1. *"Complaints Handling Procedures of the South African Human Rights Commission"* (6 November 2023) (link to pdf: <https://www.sahrc.org.za/home/21/files/Complaints%20Handling%20Procedures%20-%20November%202023%20March07.pdf>)
2. *"Confidentiality and Implementation of the Decisions of the African Commission on Human and Peoples' Rights"* – African Human Rights Law Journal, Murray, R.
3. African Commission on Human and Peoples' Rights *"Declaration of Principles on Freedom of Expression and Access to Information in Africa"* Adopted by the ACHPR at its 65th Ordinary Session held from 21 October to 10 November 2019 in Banjul, The Gambia at 8.
4. Amnesty International *"My World is Finished" Rohingya Targeted in Crimes Against Humanity in Myanmar* (2017) Amnesty International; Human Rights Watch *"Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli* (19 December 2017) <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli> .
5. B Ayuk *"ACHPR 69th OS: IHRDA Statements on Interpretation of Article 59 of the African Charter on Confidentiality"* (16 November 2021) <https://www.ihrda.org/2021/11/achpr-69th-os-ihrda-statement-on-interpretation-of-article-59-of-african-charter-on-confidentiality/>.
6. B Ayuk *"ACHPR 69th OS: IHRDA Statements on Interpretation of Article 59 of the African Charter on Confidentiality"* (16 November 2021) <https://www.ihrda.org/2021/11/achpr-69th-os-ihrda-statement-on-interpretation-of-article-59-of-african-charter-on-confidentiality/>

7. Dr. R Nekura and S. Ndashe *"Confidentiality or Secrecy? Interpretation of Article 59, and Implications for Advocacy on Pending Communications before the African Commission"* at 47 - 52.
8. M Killander *"Confidentiality Versus Publicity: Interpreting Article 59 of the African Charter on Human and Peoples' Rights"* 6 (2006) African Human Rights Law Journal 572-581 at 578.
9. R Murray *"Confidentiality and the Implementation of the Decisions of the African Commission on Human and Peoples' Rights"* (2019) 19 African Human Rights Law Journal 1-24 at 4.
10. South African Human Rights Commission – About the SAHRC (link to pdf: <https://www.sahrc.org.za/home/21/files/About%20SAHRC%20revised%20pamphlet%2020%20March%202018.pdf>)
11. United Nations General Assembly *"Human Rights Questions: Human Rights Questions including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms"* (12 December 1996) A/51/506/Add.1.

Website Links

1. <https://www.qhrc.qld.gov.au/complaints/making-a-complaint>
2. tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en
3. <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FHRBodies%2FGuidance-note-for-complaints-form-E.docx&wdOrigin=BROWSELINK>