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The African Commission on Human and Peoples' Rights

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SUBMISSION BY

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**IN RESPONSE TO THE CALL FOR INPUTS ON THE JOINT STUDY ON CHALLENGES OF
LITIGATING WOMEN'S AND GIRLS' RIGHTS BEFORE AFRICAN UNION HUMAN
RIGHTS ORGANS**

1. Introduction



This submission aims to complement the study by closing identified gaps and surface framing concerns that may undermine the analysis, if not attended to. We move from the premise contends that while some barriers to litigating women’s and girls’ rights are external to the system, the most significant are embedded within the institutional design, procedural practices, and jurisprudential approach of the African human rights mechanisms, particularly the African Commission on Human and Peoples’ Rights (The Commission), which is the focus of this submission. While the draft study identifies a range of legal, procedural, institutional, and socio-cultural barriers. It adopts a largely descriptive approach and does not sufficiently interrogate the structural conditions within the mechanisms themselves that shape litigation outcomes. When women’s rights concerns are considered outside the wider systemic challenges, it leads to the ghettoisation of women’s rights, a process where issues related to women are isolated, marginalised, or seen as niche concerns rather than essential parts of broader human rights struggles. The section discussing the commission’s jurisprudence overlooks how jurisprudential challenges can impede the litigation of women’s rights cases. Instead, it engages with the jurisprudence as a set of lessons for litigators. More importantly, in 2011, the Commission established the Working Group on Communications to strengthen its protective mandate. One missed opportunity is the absence of an analysis of the working group's work, including its reports and resolutions related to its mandate, its impact on broadening access to justice, and recommendations for strengthening its work to address the challenges noted in the study.

This submission is structured in two parts. Section One examines the structural and institutional barriers embedded within the system, including Article 59(1) and the structural constraint of confidentiality, institutional weaknesses and procedural barriers, interference with the independence of the Commission, access constraints relating to advisory opinions and standing, and issues of civil society exclusion and legitimacy. Section Two reframes the challenge by analysing the Commission’s jurisprudence, focusing on the patterns, inconsistencies, and limitations emerging from its case law and how these shape access to justice for women and girls. The submission concludes with a set of recommendations aimed at addressing the identified structural, procedural, and jurisprudential challenges.

2. Section One: Structural and Institutional Barriers to Access to Justice

2.1 Article 59(1) and the Structural Constraint of Confidentiality

A central and persistent barrier to effective litigation before the African Commission is its restrictive interpretation of Article 59(1) of the African Charter. Although originally intended to protect sensitive communications, Article 59 has been interpreted in practice to impose near-total confidentiality over communications, pleadings, and



decisions, often extending beyond what is necessary or justifiable. This has resulted in a system in which information relating to ongoing proceedings is inaccessible to the public, civil society actors, and even, in some cases, litigants themselves.

The implications of this approach are far-reaching. It limits the ability of civil society organisations to engage in strategic litigation and advocacy during proceedings, undermines public accountability, and restricts opportunities for legal development through third-party interventions such as amicus curiae submissions. It also has a direct impact on the realisation of the rights to receive information and freedom of expression under Article 9 of the African Charter, as the public is effectively excluded from accessing and engaging with matters of significant human rights importance.

Critically, the Commission’s restrictive approach to confidentiality is closely linked to systemic delays in decision-making and, more significantly, in the transmission and publication of decisions. This problem is not merely administrative. It directly affects access to justice because a favorable decision that is not promptly transmitted cannot be enforced, used in advocacy, or relied upon by litigants and their representatives in related proceedings.¹ Academic commentary has long criticized the African Commission’s restrictive approach to confidentiality and publication under article 59 for creating a “shroud of secrecy” around the communications procedure, with negative consequences for implementation, transparency, and the practical utility of decisions.²

In practice, decisions are often adopted but remain inaccessible for extended periods due to the requirement that they be authorised for publication under Article 59. This has resulted in substantial delays, sometimes spanning several years before parties and the public are able to access decisions. For instance, in *Egyptian Initiative for Personal Rights and Interights v Egypt*, the final submissions were filed in 2015, the decision was adopted in 2023, and only transmitted in 2025.³ Similarly, in *J v Namibia*, the decision was adopted in March 2024 but only transmitted to the victim in June 2025.⁴ This lapse as a serious obstacle to women’s access to justice and linked it to wider backlog and procedural bottlenecks within the Commission.

A comparable pattern is also evident in *Communication 686/18 – Association des femmes avocates défenseurs des droits humains, Institute for Human Rights and Development in Africa & Equality Now v Democratic Republic of Congo*, where the

¹ Frans Viljoen *International Human Rights Law in Africa* (2nd edn, OUP 2012) 326–328.

² Rachel 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.

³ Delay in transmission of decision in *Egyptian Initiative for Personal Rights and Interights v Egypt*

⁴ Delay in transmission of decision in *J v Namibia*. Initiative for Strategic Litigation in Africa (ISLA), ‘Press Statement: ACHPR Decision in *JMN v Namibia*’ (25 June 2025) <https://www.the-isla.org/press-statement-decision-jmn-v-namibia-24-june-2025-ao-ck-ao/>.



decision was adopted in March 2023 but only transmitted in May 2025, with notification effected through correspondence dated 2023 but sent in 2025.⁵

These delays significantly undermine the effectiveness of the Commission as a forum for timely redress, rendering justice both delayed and, in many instances, effectively denied.

Such delays are not merely administrative inefficiencies; they are structurally enabled by the Commission's interpretation of Article 59, which ties the accessibility of decisions to a process that is neither transparent nor time-bound. As a result, litigants are left without timely remedies, legal practitioners are unable to rely on up-to-date jurisprudence, and the broader development of human rights law is stifled.

Comparative analysis further underscores the extent to which this approach deviates from established practice. Other regional and international human rights systems adopt a presumption of openness, with confidentiality applied only in narrowly defined and justified circumstances. In contrast, the African Commission's current practice has the effect of transforming confidentiality into the default position, thereby undermining transparency, accountability, and the effectiveness of its protective mandate.

"Justice must be seen to be done" is a legal principle that guarantees legal proceedings are impartial, transparent, and free from bias. It implies that even if a decision is just, it must also appear just to the public to uphold trust in the legal system. Open justice is often interpreted as "justice must not only be done but has to be seen to be believed." Public confidence in the judicial system depends on visible impartiality; without it, the legitimacy of the law is compromised. Women and Girls cannot seek justice from a mechanism where it is not possible to see how justice is done.

The Working Group on Communications is mandated to strengthen the effectiveness and accessibility of the communications procedure; in practice, its interventions have reinforced some of the very barriers that undermine litigation. Notably, in successive Activity Reports (81st, 83rd, and 85th Sessions), the Working Group has reiterated the need for strict compliance with the principle of confidentiality under Article 59 of the Charter, without addressing the well-documented adverse effects of this approach on transparency, access to information, and civil society participation. This repeated emphasis reflects a missed opportunity for the Working Group to interrogate and reform restrictive practices within the communications procedure. Instead of advancing procedural openness and accountability, its current posture risks entrenching a culture

⁵ Communication 686/18 – Association des femmes avocates défenseurs des droits humains, Institute for Human Rights and Development in Africa & Equality Now v Democratic Republic of Congo (ACHPR), decision adopted March 2023, transmitted May 2025.



of opacity that weakens strategic litigation, limits engagement by litigants and third parties, and ultimately undermines the Commission's protective mandate.

Similarly, the commission's acceptance of new mandates to serve as an implementing and monitoring body for new human rights treaties, such as the African Union Convention on Ending Violence against Women and Girls (CEVAWG) and the Protocol to the African Charter on Human and Peoples' Rights on the rights of persons with disabilities in Africa, further entrenches and expands the access to justice challenges embedded in Article 59. There is a general acceptance that Article 59 is an anomaly in human rights bodies and that it violates rights. The inability to take positive action to limit the harm caused by Article 59 constitutes an access-to-justice challenge.

2.2 Institutional Weaknesses and Procedural Barriers

Broader institutional and procedural weaknesses within the African Commission significantly hinder the effective litigation of women's and girls' rights. These include failure to meet procedural deadlines, limited communication with litigants, and a lack of accessible information about pending cases and proceedings. The cumulative effect of these shortcomings creates a system that is difficult to navigate, unpredictable in its operations, and insufficiently responsive to litigants' needs. Despite ongoing engagement on several issues, such as delays, email communication, delays in transmitting decisions, and the implementation of decisions by the litigants' forum, including an opportunity to convene a public panel during the commission's open session and produce a set of recommendations, none of these follow-up steps has been executed. These engagements and interventions are not even documented in the working group's reports. The erosion of internal mechanisms designed to support the communications procedure has further weakened the Commission's capacity to function effectively. Additionally, the absence of regular public hearings, cause lists, and transparent procedural practices restricts access to justice and diminishes the institution's legitimacy. These challenges are consistent with broader systemic issues identified within the African human rights system, including overlapping mandates, inefficient use of limited resources, and weak implementation of decisions.

Importantly, these are not merely technical or administrative shortcomings. They directly shape the conditions under which litigation occurs and determine the extent to which women and girls can meaningfully access and utilise regional accountability mechanisms.

2.3 Interference with the independence of the commission

An additional structural concern relates to the operation of Article 54 of the African Charter, which requires the Commission to submit its Activity Reports to the Assembly of



Heads of State and Government. In practice, this process has enabled political interference in the Commission’s work, including instances where states have influenced the content of fact-finding mission reports, decisions, and procedural outputs. This has reportedly resulted in delays in publication, the expungement or alteration of decisions, and broader constraints on the Commission’s independence. These concerns are further reinforced by developments such as Decision 1015 of the AU Executive Council, which advances a restrictive interpretation of the Commission’s independence as merely “functional” and subject to oversight by AU policy organs, thereby undermining its autonomy as a Charter-based body.⁶ Such interventions risk subordinating the Commission’s human rights mandate to political processes and eroding its quasi-judicial character.

Such practices raise serious concerns regarding unequal treatment of parties to communications, as states are able to exert influence over outcomes outside the Commission’s formal legal and procedural frameworks. The resulting politicisation undermines the integrity of the system, weakens accountability, and further limits access to justice for women and girls seeking redress at the regional level.

2.4. Access Constraints: Advisory Opinions and Standing

Access to the African Court through advisory opinions represents another significant barrier to advancing women’s rights litigation. The current interpretation of standing requirements, which limits access to organisations recognised by the African Union, has excluded most civil society organisations from utilising this mechanism. The absence of clear criteria or procedures for obtaining such recognition further compounds this limitation, creating legal uncertainty and restricting the strategic use of advisory opinions to clarify legal standards.

This restrictive approach undermines the role of advisory opinions as a tool for advancing jurisprudence and strengthening accountability. It also reflects a broader pattern of limited access within the African human rights system, where procedural barriers and institutional practices constrain the participation of key actors, including women’s rights organisations.

3.5. Civil Society Exclusion and Legitimacy Concerns

The limited participation of civil society in both litigation processes and institutional development further weakens the system's effectiveness. The current framework restricts access to information, limits opportunities for engagement, and reduces civil

⁶ AU Executive Council Decision 1015 (XXXIII) (2018), para 5; see analysis highlighting its impact on the independence and functioning of the African Commission.



society actors' ability to contribute to the development and implementation of human rights standards.

This reflects a broader concern within the African Union system, where civil society engagement remains largely consultative rather than participatory. As a result, the perspectives and expertise of actors directly involved in litigation and advocacy are often excluded from processes that shape the system's functioning. This affects not only the quality of outcomes but also the legitimacy and inclusiveness of the mechanisms themselves.

3. Section two: Jurisprudential Barriers to Access to Justice

3.1 Reframing the Challenge: From Description to Structural Analysis

A key limitation of the study lies in its treatment of case law. Rather than analysing jurisprudence as a site where structural, procedural, and normative barriers emerge, the study adopts a largely descriptive approach, outlining facts and offering guidance to litigants without interrogating underlying patterns across cases. As a result, it fails to identify how jurisprudence itself shapes access to justice within the African human rights system.

There is evidence of divergent interpretations of key legal principles, particularly equality and non-discrimination, alongside a lack of conceptual clarity in the application of established norms. This unpredictability weakens the coherence of the system and creates uncertainty for litigants seeking to frame claims within an evolving and inconsistent jurisprudential landscape.

A further concern is the Commission's failure to clarify its invocation of "African values" within its jurisprudence. In the absence of a rights-consistent articulation, this concept has increasingly been mobilised to justify regressive interpretations of gender, reinforcing patriarchal norms, limiting women's autonomy, and constraining the development of progressive legal standards.

In particular, the treatment of violence against women illustrates a concerning trend. While earlier decisions recognised its structural and gendered nature, more recent approaches have introduced restrictive analytical frameworks such as comparator-based reasoning that fail to capture systemic inequality. This shift risks reinforcing, rather than addressing, discrimination within the Commission's jurisprudence.

3.2 Procedural Barriers in Jurisprudence: Admissibility and Access to Justice

A significant procedural challenge in the Commission's jurisprudence concerns the inconsistent and unpredictable application of admissibility requirements, particularly



Article 56(6) of the African Charter.⁷ This has, in practice, limited access to justice by preventing cases raising substantive women’s rights issues from being considered on the merits.

Priscilla Njeri Echaria v Kenya,⁸ illustrates this challenge.⁹ While the Commission accepted that local remedies had been exhausted, it declared the communication inadmissible on the basis that it was filed 31 months after exhaustion and therefore outside a “reasonable time”.¹⁰ relying on an evolving interpretation drawn from *Michael Majuru v Zimbabwe* where it suggested that six months was the “usual standard”, while acknowledging that each case must be assessed on its own merits.¹¹ It concluded in *Echaria* that filing after 31 months, without reasons, was “clearly unreasonable”.¹²

The concern lies not in the application of Article 56(6) itself, but in the reliance on emerging and insufficiently stabilised jurisprudence without clear and consistently articulated standards. This creates a situation where admissibility becomes contingent on shifting and inadequately transparent criteria, raising concerns of procedural fairness..¹³ This raises a procedural fairness concern: when admissibility thresholds are sharpened during adjudication, without giving parties a meaningful opportunity to address the new doctrinal position, access to justice becomes contingent on an unstable and insufficiently transparent jurisprudential framework.

For women’s rights litigants, the implications are significant. *Echaria* raised substantive issues of gender equality and women’s economic rights, yet these were never examined on the merits. The case demonstrates how procedural doctrine can operate as a structural barrier, filtering out important claims before substantive determination. This reflects a broader pattern of unpredictability and limited transparency in the Commission’s admissibility jurisprudence, undermining its effectiveness as a forum for access to justice.

⁷ M Killander, ‘Human rights developments in the African Union during 2014’ (2015) 15 *African Human Rights Law Journal* 537–558, noting the Commission’s increasingly strict approach to article 56(6) 286.

⁸ *Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and Interights) v Kenya* Communication 375/09, African Commission on Human and Peoples’ Rights, decision of 5 November 2011.

⁹ *Ibid*, para 5-9.

¹⁰ *Ibid*, para 17.

¹¹ *Michael Majuru v Zimbabwe* Communication 308/05, African Commission on Human and Peoples’ Rights, cited in *Echaria* on article 56(6).

¹² *Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and Interights) v Kenya* Communication 375/09, African Commission on Human and Peoples’ Rights, decision of 5 November 2011 61.

¹³ M Killander, ‘Human rights in the AU during 2012 and 2013’ (2014) 14 *African Human Rights Law Journal*, discussing *Echaria* as an inadmissibility decision under article 56(6).



3.3 Jurisprudential Inconsistency: Violence as Discrimination

The Commission’s jurisprudence reveals a lack of coherence in its treatment of violence against women as a form of discrimination. While some decisions recognise the structural and gendered nature of such violence, others revert to restrictive frameworks that undermine established legal standards.

In *Egyptian Initiative for Personal Rights and Interights v Egypt*, the Commission expressly recognised the link between gender-based violence and discrimination. It found that sexual assaults perpetrated by State and State-controlled actors constituted gender-based violence¹⁴. The Commission further emphasised that the violations were gender-specific in nature and characterised them as “discriminatory by extension”.¹⁵ On this basis, it ultimately found a violation of Article 2 of the African Charter. The Commission’s decision was based on formal equality, requiring a “male standard” to prove that the women were treated worse. However, this otherwise progressive reasoning is undermined by the Commission’s reliance on a formal equality framework, which effectively requires a “male standard” or comparator to establish discrimination.

This approach was reinforced in *Equality Now and EWLA v Ethiopia*, where the Commission adopted a rigid comparator test, requiring proof of differential treatment. It explicitly declined to recognise violence against women as discrimination in itself, departing from established international standards, including CEDAW General Recommendation No. .¹⁶ Notably, the Commission stated that “it is sufficient that the failures of the Respondent State amount to violations of a name other than ‘discrimination’.”¹⁷ Despite addressing rape and gender-based harm, the Commission treated violence and discrimination as distinct, reduced equality to a formal comparator test, and failed to account for structural and substantive inequality.

A shift is evident in *J v Namibia*, where the Commission departed from the comparator-based approach and adopted a substantive equality framework. It recognised that the State’s failure to exercise due diligence in preventing and responding to gender-based violence was inherently discriminatory, without requiring proof of differential treatment.¹⁸

However, In *Association of Women Lawyers, IHRDA and Equality Now v DRC*, the Commission again demonstrated inconsistency. While acknowledging the gendered and targeted nature of the violence, it failed to find a violation of the right to non-

¹⁴ *Egyptian Initiative for Personal Rights and Interights v Egypt*, para 166.

¹⁵ See n5, paras 137 and 153.

¹⁶ *Equality Now and EWLA v Ethiopia*, paras 147, 149 and 150.

¹⁷ See n7, para 150.

¹⁸ *J v Namibia*, paras 202-203.



discrimination,¹⁹ effectively reintroducing a formal equality approach, disregarding its earlier recognition that sexual violence is inherently gender-specific and discriminatory.

Taken together, these decisions reflect an inconsistent approach in which the Commission alternates between recognising gender-based violence as a form of discrimination and reverting to a formal, comparator-based analysis that fails to capture its discriminatory nature. Consequently, the Commission has yet to establish a coherent and principled standard that consistently recognises violence against women as discrimination under the African Charter.

3.4 Gendered Limitations in Judicial Reasoning: Failure to Foreground Women:

The Commission's jurisprudence reflects a recurring failure to foreground women as autonomous rights-holders, instead framing violations through neutral or relational lenses that obscure their gendered nature. In *Curtis Francis Doebbler v. Sudan* (2003), The Commission found that the flogging of female students under Sudan's public order laws violated Article 5 as degrading and harmful treatment. However, it failed to recognise the gendered nature of the violation, framing it solely as torture rather than as a violation of women's bodily autonomy and gender-based discrimination. By not interrogating the underlying patriarchal legal framework regulating women's behaviour, the Commission limited the development of a gender-responsive jurisprudence grounded in equality and autonomy.

The same failure to foreground women is replicated in Communication 686/18 - *Association des femmes avocates défenseurs des droits humains, Institute for Human Rights and Development in Africa & Equality Now v. Democratic Republic of Congo* (2023), case arising from widespread sexual violence by Congolese armed forces. Although the African Commission found multiple violations, it failed to treat sexual violence as a distinct and structural form of gender-based harm, instead subsuming it within a broader catalogue of abuses. Its use of a patriarchal narrative referring to victims as "wives or daughters" displaces women as autonomous rights-holders and frames harm through male injury, reinforcing gender hierarchies. The Commission also failed to interrogate underlying power structures, including militarised masculinity and entrenched patriarchy, and its reparations analysis lacked gender-responsive measures. As a result, the decision acknowledges violations but does not engage their structural gendered nature, limiting the development of feminist-informed jurisprudence.

Similarly, experience from sub-regional mechanisms demonstrates a broader pattern in which courts lacking a specialised understanding of gender-based violence produce

¹⁹ *Association of Women Lawyers, IHRDA and Equality Now v DRC*, para 125.



inconsistent and, at times, regressive decisions. These outcomes reflect deeper institutional and conceptual limitations, including the failure to recognise violence against women as a form of discrimination and the inability to apply due diligence standards effectively.

These jurisprudential challenges are not isolated issues but rather indicative of systemic weaknesses that directly affect women's and girls' ability to obtain meaningful remedies.

4. Conclusion and Recommendations

Strengthening litigation on women's and girls' rights before African Union human rights organs requires addressing both structural and jurisprudential barriers that shape access to justice. These challenges are systemic and affect the effectiveness, coherence, and legitimacy of the African human rights system. Without reform, existing normative frameworks risk remaining underutilised and ineffective.

Accordingly, reforms must address the institutional, procedural, and jurisprudential conditions that determine litigation outcomes.

Key recommendations include:

- **Reform Article 59(1)** to ensure transparency, limit excessive confidentiality, and enable timely access to decisions and proceedings.
- **Strengthen procedural transparency and predictability**, including clear timelines, consistent admissibility standards, and improved communication with litigants.
- **Strengthen jurisprudential coherence and analysis** by adopting clear and consistent standards, recognising violence against women as inherently discriminatory, and moving from formal comparator approaches to substantive equality. This should include improving predictability in admissibility (e.g. Article 56(6)), developing principled jurisprudential reasoning, and moving beyond descriptive case treatment to identify systemic barriers.
- **Adopt a gender-responsive and context-sensitive approach to adjudication and remedies**, ensuring decisions foreground women as autonomous rights-holders, interrogate underlying power structures, and provide context-specific, transformative remedies.
- **Clarify the use of “African values”** to ensure alignment with human rights standards and prevent regressive or discriminatory interpretations.
- **Safeguard the independence of the Commission**, particularly from political interference through Article 54 processes.



- **Strengthen the role of the Working Group on Communications** to promote transparency, accessibility, and procedural reform.
- **Expand access to advisory opinions and civil society participation** to support accountability and progressive jurisprudence.
- **Address broader institutional weaknesses**, including coordination gaps, inefficiencies, and capacity constraints.