

# **Informal guidance note by the secretariat for the States parties on procedures for the submission and consideration by treaty bodies of individual communications<sup>1</sup>**

January 2017

## **A. Registration of communications**

1. Engagement of a Committee with a State party on an individual communication starts with the note verbale by which the Secretariat informs the State that the communication has been submitted to that Committee and has been registered under a specific number. By the same note verbale, the State party is provided with a copy of the communication submitted by the author and is requested to provide observations on the admissibility and the merits of the author's claims within six months.<sup>2</sup> Depending on the specific circumstances described in the communication, the Committee may request initially that the State submit observations on admissibility only.

2. Authors are generally requested to limit their communication to 50 pages (excluding annexes). When the communication exceeds 20 pages, it should also include a summary of up to five pages highlighting its main elements.

3. A hard copy and an electronic version of the note verbale and any attachments, as well as subsequent notes verbales on the communication in question, are sent to the permanent mission in Geneva. Long annexes submitted by the author are generally sent to the permanent mission in electronic version only. States may request the Secretariat to send electronic versions of notes verbales and attachments directly to a particular authority in their capital, with or without a copy being sent to their permanent mission in Geneva.

4. The decision to register a communication is taken by either a special rapporteur or a working group, depending on the Committee.<sup>3</sup> The special rapporteurs and working groups are also competent, on behalf of the Committee in question, to deal with any procedural issue that may arise from the moment of registration to the moment when the Committee examines the admissibility and/or the merits of a given communication. The special rapporteur or working group is also competent to, *inter alia*, deal with requests from authors seeking the adoption of interim measures and protection measures by the State; requests from States to lift interim measures; requests to split the examination of admissibility from the examination of the merits; and requests from the parties in a communication to extend the deadline by which they must submit observations and comments.<sup>4</sup>

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<sup>1</sup> The treaty bodies referred to in the present note are the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances and the Committee on the Rights of the Child.

<sup>2</sup> The deadline is four months in the procedure under the International Convention for the Protection of All Persons from Enforced Disappearance and three months under the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>3</sup> In the case of the Human Rights Committee the function of the working group on communications is to facilitate and expedite the examination by the Committee, in plenary, of the admissibility and the merits of communications. Procedural issues, such as registration of new communications, are dealt with by the Special Rapporteur on new communications and interim measures.

<sup>4</sup> For the Human Rights Committee, see the report entitled "The mandate of the Special Rapporteur on new communications and interim measures" (CCPR/C/110/3).

5. A communication is registered and transmitted to the State concerned only after the special rapporteur or working group, with the assistance of the OHCHR Secretariat, has ascertained that the basic admissibility criteria have been prima facie met (i.e. that the relevant instrument has been ratified by the State concerned, that the identity of the alleged victim has been ascertained, that the powers of attorney have been submitted etc.), that the claims have been substantiated to a minimum standard and that the author is aware of the procedure and wishes to submit the communication to the Committee in question. This often requires the Secretariat to request the author to complete or clarify the information provided when he or she initially approached the Committee.
6. Inadmissibility decisions on registered cases can be taken by the Committee without prior transmission of the communication to the State concerned for observations. However, the decision is transmitted to the author and the State, for information.

## **B. Interim measures**

7. At any time during a Committee's consideration of a communication, the special rapporteur or working group may request the State to take measures to avoid irreparable damage to the alleged victim and avoid rendering nugatory any final decision taken by the Committee on the admissibility and the merits of the communication. Typical interim measures involve, for instance, potential violations of articles 6 (the right to life) and 7 (the prohibition of torture or other cruel, inhuman or degrading treatment) of the International Covenant on Civil and Political Rights. Adoption of interim measures has nevertheless also been requested in some situations to stop imminent alleged violations of other rights such as those protected under articles 17, 18, 19 or 27 of the Covenant. Failure by the State concerned to adopt interim measures is considered by the Committees to constitute a breach of the State's obligation under the respective treaty.
8. Depending on the specific facts of each communication, the decision to grant interim measures can be made provisional. In such situations, the State is informed that the decision of the special rapporteur or working group to grant interim measures may be revised in the light of information provided by the State. In some circumstances, the Committee's decision to grant interim measures is issued subject to the author providing additional information to the Committee within 60 days. If no relevant information is received by that time, the interim measures request is discontinued.
9. Irrespective of whether the request for adoption of interim measures is provisional or not, the State can, at any stage in the proceedings, ask the Committee to lift the request. The information provided by the State to justify the lifting of interim measures should be succinct and focus, preferably, on admissibility issues rather than on the merits of the case. In responding to a request to lift interim measures, the special rapporteur or working group in question cannot be expected to carry out an anticipated examination of the merits of the communication, as such an examination can only be made by the Committee as a whole once the proceedings have been completed. The State's request to lift interim measures should be clearly formulated at the beginning of the letter addressed to the Committee.
10. The State's request to lift interim measures is generally transmitted to the author of the communication, to give him or her the opportunity to provide comments within a brief deadline. Once the comments have been received, or should the author fail to submit them within the deadline, the special rapporteur or working group takes a decision on the State's request on the basis of the information contained in the file.
11. The decision of the Committee to request interim measures and the decision to reject the State's request to lift them are primarily procedural matters and do not imply that any conclusion has been reached in respect of the admissibility or the merits of the communication. The reason for such decisions is not communicated to the parties.

### **C. Protection measures**

12. In the course of the proceedings, the Committee may also request the State to take protection measures with respect to individuals involved in the communication. Protection measures are to be distinguished from interim measures in that their purpose is not to prevent irreparable damage affecting the object of the communication itself, but to protect those who might suffer adverse consequences (including any counsel and family members) as a result of communications or cooperation with the Committee.

### **D. Submission of observations and comments by the parties**

13. Observations from the State on admissibility and the merits should not exceed 50 pages (without annexes). If the submission exceeds 20 pages an executive summary should also be provided. Submissions should be sent to the Secretariat in electronic form.

14. When the author of the communication is not in a position, for reasons beyond his or her control, to provide the Committee with copies of court decisions and other official documents relevant for his or her case, the Committee may ask the State party to provide such documents, in one of the Committee's official languages.

15. The observations on admissibility and the merits submitted by the State are transmitted to the author of the communication with a request to provide comments within two months. Comments from the author on the State's observations should be limited to 20 pages (without annexes).

16. The parties to a communication can request the Committee to extend the deadline within which to submit observations and comments, but such requests should be reasoned.

17. If the parties do not comply with the given deadline, the Committee sends reminders. If no response is provided despite the reminders, the Committee examines the communication on the basis of the information contained in the file.

18. Failure by the State to submit observations is considered by the Committee to constitute lack of cooperation in the procedure and is referred to as such in the Committee's final decision on the communication. In cases of failure by the author of the communication to provide comments, the Committee may decide to discontinue the examination of the communication as a result of having lost contact with the author.

19. When submitting observations and comments, the parties may indicate particular circumstances that would prompt the Committee to take a decision on admissibility and/or the merits as early as possible ("to fast track consideration").

20. States are welcome to submit to the Committee a background note explaining the procedure for exhausting domestic remedies, generally or with respect to a particular type of claim, for instance the procedure for requesting asylum. Such a note can be referred to by States in formulating their observations on specific communications, to reduce the length of submissions.

21. After the parties in a communication have submitted one round of observations and comments on admissibility, merits or both, the communication is generally considered ready to be examined by the Committee. The parties may, however, present additional submissions on relevant substantive issues. Such submissions should not exceed 10 pages (without annexes).

22. Depending on their relevance, the additional submissions are transmitted to the other party for information only or for information and comments. However, the fact that a submission is transmitted for information only does not mean that the party to which it is addressed cannot comment on it, within a reasonable time.

23. Requests for observations and comments on additional submissions or requests for information emanating from the Committee on specific issues are given ad hoc deadlines, shorter than those applicable to first-round submissions.

24. At any given time the Committee may inform the parties that no more additional submissions are required from them in order for it to examine the admissibility and/or the merits of the communication.

25. While the procedure is under way, the Committee may accept relevant information and documentation submitted by third parties. Such information and documentation is transmitted to the parties in the communication for information and/or comments.

#### **E. Split requests**

26. A request by the State party in a communication that the Committee should examine the admissibility separately, i.e. before the State party submits its observations on the merits (known as a “split request”) may be formulated within two months after the transmission of the communication to the State in question. The split request suspends the deadline for the State to submit observations on the merits.

27. When the split request has been granted, the State will only be required to submit observations on the merits if the Committee declares the communication admissible. If the Committee rejects the split, a new deadline is given for the State to submit observations on the merits. For most Committees, the deadline is four months as of the date on which the decision rejecting the split request is communicated to the State.

28. Split requests should focus primarily on formal admissibility and procedural issues, rather than on substantive ones, and should not be resorted to by States in a systematic manner. In dealing with a split request, the special rapporteur or working group in question cannot be expected to carry out an anticipated examination of the merits of the communication, as such an examination can only be made by the Committee as a whole, once the proceedings have been completed.

29. The State making a split request should formulate its request clearly, at the beginning of its observations on admissibility. Otherwise, the mere submission of arguments opposing admissibility will not be interpreted by the special rapporteur or working group as a split request.

#### **F. Requests to suspend examination or to discontinue examination of a communication**

30. At any stage of the proceedings, the parties can request, in view of developments having an impact on the issues raised in a communication, that the examination of the communication be suspended for a limited period of time or that it be discontinued. Such requests are transmitted to the other party, as applicable, for information only or for information and comments within a given deadline. The Committee takes a decision on the basis of the information submitted to it and informs the parties accordingly.

31. Regarding communications where the consideration has been temporarily suspended, the parties are requested to keep the Committee regularly informed of developments. The Committee resumes the examination of a suspended communication in the light of relevant developments. As for any other registered communication, the Committee examines the new information with a view to, as applicable, decide on the admissibility and/or the merits of the claims or to discontinue its examination.

32. A decision to discontinue proceedings is final. The decision is formally issued and made public. If the same author subsequently submits to the Committee information on new facts linked to the original claim, the submission will be dealt with by the Committee as a new communication, separate from the original one.

## **G. Examination of admissibility and the merits**

33. Once the parties have provided observations and comments, or after the deadline to submit such observations and comments has elapsed and no submissions have been received, as described above, the communication is normally considered ready to be examined by the Committee, which proceeds to an examination of the admissibility and/or the merits.

34. In deciding the order in which communications are examined, the Committee generally follows the chronological order in which they were registered. However, other criteria may also be taken into consideration including: (a) the urgency of the matter in view of the circumstances of the alleged victim (imminent execution of a death penalty, imprisonment after an unfair trial etc.); (b) the fact that the State has acceded to the Committee's request to grant interim measures pending the Committee's disposition of the case; (c) the claim concerns the rights of persons as members of a group in a situation of vulnerability ; or (d) the possible implications that a decision by the Committee may have for future developments in the State on an issue of general concern.

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