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| AFRICAN UNION                                                                                     |  | UNION AFRICAINE |
| الاتحاد الأفريقي                                                                                  |                                                                                   | UNIÃO AFRICANA  |
| UNIÓN AFRICANA                                                                                    |                                                                                   | UMOJA WA AFRIKA |
| AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS<br>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES |                                                                                   |                 |

## GUIDELINES ON AMICABLE SETTLEMENT BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Adopted during the 77<sup>th</sup> Ordinary Session of the African Court on Human  
and Peoples' Rights (2<sup>nd</sup> to 26<sup>th</sup> June 2025) in  
Arusha, United Republic of Tanzania

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## A. Overview of the Court's Amicable Settlement Procedure

1. In accordance with Articles 3 and 4 of the Protocol, the contentious jurisdiction of the African Court on Human and Peoples' Rights (the Court) extends to all cases and disputes submitted to it relating to the interpretation and application of the Charter, the Protocol as well as any other relevant human rights instrument ratified by the State concerned.
2. Article 5 lists the entities entitled to bring cases before the Court as follows:
  - i. The Commission
  - ii. The State Party which has lodged a complaint to the Commission,
  - iii. The State Party against which the complaint has been lodged;
  - iv. The State Party whose citizen is a victim human rights violation,
  - v. African Intergovernmental Organizations,
3. Article 5(3) further specifies that: "The Court may entitle non-governmental organizations (NGOs) with observer status before the Commission, and individuals, to institute cases directly before it, in accordance with Article 34(6) of this Protocol". This instrument provides for a declaration accepting the jurisdiction of the Court.
4. In the exercise of its jurisdiction, the Court, within the meaning of Article 9 of the Protocol, "may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter".
5. This provision is restated, *mutatis mutandis*, by Rule 29(2)(a) of the Rules of Court, which states that:

"[i]n the exercise of its jurisdiction in contentious matters, the Court may: try to reach an amicable settlement in a case pending before in accordance with the provisions of the Charter and the Protocol".

6. To this end, the Court may, contact the parties and take appropriate measure to facilitate amicable settlement of a dispute brought before it, in accordance with Rule 64 of the Rules of Court.
7. The Court shall play a key role in the amicable settlement procedure. It may, in accordance with the Rules of Court, initiate this procedure, *suo moto*, at the time of filing the application or at any stage of the procedure, or at the request of one of the parties. It may also encourage the parties to consider an amicable settlement before initiating a formal litigation procedure.
8. Where an agreement is reached, the Court shall deliver a judgment restricted to the facts and the terms of the agreement.
9. It should be emphasized that the amicable settlement procedure is a ground for suspending the litigation procedure. Where it is found that the discussions to reach an agreement have failed, the contentious procedure shall resume
10. However, within the meaning of Rule 64(5) of the Rules of Court, the Court may, in the interest of justice or to preserve public interest or order, particularly in the event of a massive and serious violation of human rights, decide not to refer the case for an amicable settlement.

**B. Stages in the conduct of negotiations and the reaching an amicable settlement agreement**

**i. Before an amicable settlement**

11. The Court shall ensure that the amicable settlement is arranged in an efficient manner and shall deal with preliminary matters, including but not limited to:
  - inviting the parties;

- providing the applicant legal aid, if necessary;
- verifying that the parties are interested and entitled to negotiate, obtaining the consent of the parties;
- explaining the role of the Court and its Registry in the amicable settlement procedure;
- explaining to the parties the purpose of the amicable settlement agreement and its terms, as well as the amicable settlement procedure;
- requesting the parties and/or their representatives to prepare preliminary statements, including various offers;
- verifying whether the parties wish to disclose and/or exchange documents; and
- verifying the arrangements made regarding the venue of the meeting or online meeting, as well as any language requirements.
- determining the provisional timetable for the amicable settlement procedure and the tentative dates for each stage;
- ensuring that the parties understand the confidentiality of the procedure and have a prior confidentiality agreement signed, if necessary;
- confirming the modalities of representation of the parties, particularly whether the representatives have the power to enter into an agreement;
- identifying initial points of agreement and disagreement, to lay the groundwork for a structured discussion;
- analyzing the legal and factual issues, in order to enable the Court to effectively assist in guiding the talks;
- preparing the parties for the next stage of the proceedings if an amicable settlement fails, particularly as regards the resumption or continuation of litigation.

## **ii. Commencement of the amicable settlement phase**

12. The amicable settlement process is voluntary and requires the collaboration of both parties. The role of the Court is to ensure that the parties have an understanding of the amicable settlement procedure and its implications. It shall supervise and facilitate the procedure. Through its Judge-Rapporteur (JR), the Court shall:

- set out a framework and guidelines for discussions, which may include meetings, written submissions or other forms of communication supervised by the Court,
- meet with the parties, separately, for presentations and answering questions;
- bring the parties together to make presentations;
- remind the parties of the purpose of the proceedings, the role of the Court and the confidentiality of the proceedings;
- explain the structure of the procedure, from opening statements to the combination of discussions and side meetings;
- Remind the parties of the rules governing the conduct of the meeting.

## **iii. Opening Statements**

13. The parties are then given time for their opening statements and presentation of their arguments.

14. The Court may ask such questions to clarify any matter, shall ensure that all matters are dealt with, and shall determine the questions to be asked.

#### **iv. Dispute investigation and analysis**

15. The Court shall invite the parties to one or as many meetings and/or exchanges as necessary, but of short duration, to discuss the following aspects:

- causes of the conflict;
- the respective positions of the parties on the matter in contention;
- the underlying claims and complaints of the parties;
- The Court, through the Judge-Rapporteur (JR), shall invite the parties to one or more meetings or exchanges of short duration, according to the needs of the case, to gain a deeper understanding of the dispute. This phase is aimed at identifying the key issues in the dispute and create a solid basis for a fair settlement. Discussions shall include the following:
  - the root causes of the conflict, including the factual events leading to the referral to the Court;
  - the respective positions of the parties on the legal and factual issues in dispute;
  - the underlying needs, interests and grievances of the parties, beyond formal legal claims;
  - alleged violations of human rights, as set out in relevant regional and international instruments, specifying the rights invoked (civil, political, economic, social or cultural);
  - the human and social repercussions of the dispute, including the impact on the victims, their families and communities (mental distress, loss of dignity, discrimination, etc.);
  - the possible acknowledgement by a party of certain facts, wrongs or responsibilities, which may constitute a basis of trust;
  - obstacles to an amicable settlement, whether legal, practical, emotional or related to political tensions;

- partial points of agreement or elements of consensus, likely to be expanded to build common ground;
- exploring innovative, restorative or symbolic solutions, such as:
  - moral or financial compensation,
  - official apologies,
  - guarantees of non-recurrence,
  - commitment to review legislation or administrative practice,
  - or any measure(s) to restore the dignity of the victim and prevent the recurrence of violations.

16. While remaining independent and impartial, the Court, through the Judge-Rapporteur, shall endeavor to identify the key points of the dispute, to explore and analyze points of convergence, common concerns or interests and determine whether the parties need to exchange information. The Court shall always verify what information it may share with the other party.

**v. Settlement options to consider**

17. The parties and the Court shall then develop and consider several options for a possible agreement. To this end, the Court shall endeavor to moderate positions and expectations and harmonize needs and demands. The Court shall endeavor to achieve these outcomes bearing in mind the claims of the parties.

**vi. Choice of options and negotiations**

18. The parties, under the guidance of the Court, through the JR, shall then discuss practical, cost-effective solutions to the mutual satisfaction of the parties.

**vii. Finalisation of the agreement or confirmation of the impossibility of reaching an agreement**

19. The Court, through the Judge-Rapporteur, shall help the parties to reach an agreement. Failing this, it shall confirm the impossibility of reaching a settlement and indicate the divergent positions of the parties for any further action to be taken in the procedure.
20. The Court shall ensure that the terms of the settlement are appropriate, viable and sustainable. It may also supervise the drafting of the settlement agreement, and ensure that it is signed and certified.

**viii. Amicable Settlement Agreement**

21. The amicable settlement agreement shall set out the settlement agreed between the parties.
22. The agreement shall spell out the terms and conditions agreed by the parties. This agreement may include clauses concerning material, financial, pecuniary and non-pecuniary compensation, redress for rights violated, corrective measures, changes in policies or procedures, or any other action necessary to remedy the human rights violations or problems identified, and guarantees of non-recurrence.
23. The agreement may also include an acknowledgement of human rights violations and formalize the parties' commitment to ensuring that such rights are respected in the future. It may also set out an action plan specifying the measures to be taken and the timeframe for their implementation, which will undoubtedly facilitate the implementation of measures that of a nature to remedy violations.
24. Unless otherwise agreed, the settlement agreement shall be generally made public. However, it may be partially or totally censored to protect the privacy of individuals and families, particularly where sensitive or personal

issues are involved. Where, for example, an applicant has requested and obtained anonymity, the agreement must not contain any detail that could help identify him or her.

25. The parties may also agree to a partial amicable settlement dealing with the aspects on which they have been able to reach agreement, which implies that litigation will continue on the outstanding aspects. Such partial/provisional amicable settlement allows the parties to initially focus on solving the most urgent problems.
26. Furthermore, in accordance with Rule 64(3) of the Rules of Court, the settlement agreement shall not disclose any details of the discussions held during the settlement process, or any written or oral submissions made during those negotiations.
27. Where an agreement is reached, the Court shall deliver a judgment restricted to the facts and provisions agreed. Such judgment shall constitute a determination of the amicable settlement procedure.
28. However, under Rule 64(5) of the Rules of Court, the Court may, in the interest of justice and to preserve public interest or order, particularly where there has been a massive and serious violation of human rights, decide to proceed with the case notwithstanding that an amicable settlement has been reached by the parties.
29. The Judge-Rapporteur who supervised and facilitated the unsuccessful out-of-court settlement may recuse himself or herself or be recused if for any other reason his or her independence or impartiality may legitimately be questioned.

**ix. Execution and monitoring of compliance with the amicable settlement agreement**

30. The Court shall supervise the implementation of the amicable settlement agreement, taking into account, if necessary, compliance monitoring hearings, pursuant to Rule 81 of the Rules of Court, by seeking information from the parties concerned, and by publishing detailed reports on progress and obstacles encountered in implementing the agreement and by including information in its annual report on cases where a State has failed to implement its decisions.