



United Nations
Educational, Scientific and
Cultural Organization

Office of International Standards
and Legal Affairs

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To: National Commissions for
UNESCO

Ref.: LA/CCR/2016/015

19 February 2016

Sir/Madam,

As you know, the Executive Board of UNESCO, by 104 EX/Decision 3.3, introduced at its 104th session (24 April-9 June 1978) a procedure for the examination of communications (complaints) received by the Organization concerning alleged violations of human rights in the Organization's fields of competence, namely, education, science, culture and communication.

The Committee on Conventions and Recommendations (CR) of the Executive Board, which is responsible for implementing this procedure, expressed the view at the 147th, 149th, 156th and 182nd sessions of the Board that every effort must be made to make it better known. It seemed desirable that the National Commissions for UNESCO and the Secretariat should join forces for this purpose. Subsequently, and indeed quite recently, the Committee members again came out in favour of wider publicity for the procedure and a higher profile for the Committee's work.

An explanatory note concerning this procedure, to which the text of the above-mentioned decision was appended, was accordingly sent to you by Circular Letter in 1997, 2000, 2002, 2004, 2006, 2008 and 2010.

It would be appreciated if you could bring these documents to the attention of organizations likely to be concerned by this procedure (non-governmental organizations, human rights commissions, universities and schools, professional organizations, parliamentary and local government circles, etc.) and let us know, as far as possible, what action you have taken to this end.

Thank you in advance for your cooperation.

Accept, Sir/Madam, the assurance of my highest consideration.

Anna Segall
Director

Enclosure: 1

EXPLANATORY NOTE

Introduction

1. Under Article I, paragraph 1, of its Constitution, adopted on 16 November 1945, UNESCO's purpose is "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations".

2. Accordingly, in 1978 the Executive Board of UNESCO laid down a confidential procedure for the examination of communications (complaints) received by the Organization concerning alleged violations of human rights in its fields of competence, namely education, science, culture and communication. This procedure is set out in *104 EX/Decision 3.3 of the Executive Board*, the text of which is appended.

Purpose of the procedure

3. The purpose of the procedure is to seek a friendly solution to cases brought to UNESCO's attention:

- by establishing a dialogue with the governments concerned to examine with them in *complete confidentiality* what could be done to promote human rights falling within the Organization's competence;
- by acting "in a spirit of international cooperation, conciliation and mutual understanding ... UNESCO not being in a position to play the role of an international judicial body" (para. 7 of 104 EX/Decision 3.3).

Specific nature of the procedure

4. This procedure has certain specific features in comparison with similar procedures existing in other agencies of the United Nations system:

- the mechanism is not treaty-based;
- a complaint may be made against any Member State precisely because it is a Member of UNESCO;
- the complaint will be examined following a procedure that retains its individual nature from start to finish, unlike procedures that consider individual communications as sources of information relating to a given situation that reveal a set of flagrant and systematic human rights violations;
- every effort is made under this procedure to avoid a conflictual and accusatory context. The aim is to improve the lot of the alleged victims, not to condemn the governments concerned, and certainly not to penalize them.

Who may submit a communication?

5. Individuals, groups of individuals and non-governmental organizations may submit communications (complaints) to UNESCO concerning violations of human rights, whether the authors of these communications are themselves victims of such violations or whether they deem to have reliable knowledge of such violations.

Who are the victims of human rights violations?

6. Teachers, students, researchers, artists, writers, journalists, in short intellectuals, be they men or women, who, by virtue of their position, come within UNESCO's fields of competence, or any other person on account of having exercised one or other of the rights set out in paragraph 7.

Which rights fall within UNESCO's competence?

7. The rights falling within UNESCO's competence are essentially the following (each article mentioned hereunder refers to the Universal Declaration of Human Rights and the rights concerned also appear in the United Nations Covenants of 16 December 1966):

- the right to education (Article 26);
- the right to share in scientific advancement (Article 27);
- the right to participate freely in cultural life (Article 27);
- the right to information, including freedom of opinion and expression (Article 19).

These rights may imply the exercise of others, the most noteworthy of which are:

- the right to freedom of thought, conscience and religion (Article 18);
- the right to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19);
- the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (Article 27);
- the right to freedom of assembly and association (Article 20) for the purposes of activities connected with education, science, culture and information.

How can a communication be sent to UNESCO?

8. By a letter sent to the Director of the Office of International Standards and Legal Affairs of UNESCO (7 place de Fontenoy, 75352 Paris 07 SP, France). This letter containing a concise statement of the allegations must be signed and drafted in one of the Organization's working languages (English or French). Following this, the UNESCO Secretariat will send the author of the letter a *form* to be completed, which constitutes his/her communication and which will be transmitted to the government concerned and examined by the *Committee on Conventions and Recommendations of the Executive Board* responsible for implementing the procedure.

How are the communications examined?

9. The Committee on Conventions and Recommendations examines communications *in private session*. In principle, the Committee meets at UNESCO Headquarters twice yearly during Executive Board sessions (in spring and autumn).

10. In the first instance, it examines the *admissibility* of the communications. There are ten conditions governing admissibility which are set out in paragraph 14(a) of 104 EX/Decision 3.3; if one of them is not met, no further action is taken on the communication. Thus, for a communication to be admissible, it must, *inter alia*, meet the following conditions:

- the communication must not be anonymous;
- the communication must not be manifestly ill-founded and must appear to contain relevant evidence;
- the communication must be neither offensive nor an abuse of the right to submit communications;
- the communication must not be based exclusively on information disseminated through the mass media (the press, television, radio, etc.);
- the communication must be submitted within a reasonable time limit following the facts which constitute its subject matter or within a reasonable time limit after the facts have become known;
- the communication must indicate whether an attempt has been made to exhaust available domestic remedies with regard to the facts which constitute the subject matter of the communication and the result of such an attempt, if any.

11. The Committee then proceeds to *examine the substance of the communications*. For this purpose, the representatives of the governments concerned are invited to provide information or answer questions asked by members of the Committee on either the admissibility or the merits of the communication. Since the Committee is not in any way an international tribunal, it endeavours to resolve the problem in a spirit of international cooperation, dialogue, conciliation and mutual understanding. Out of a concern for efficiency in the search for a friendly solution, the Committee works in the strictest confidentiality, which is vital to the success of its action.

12. Following the session during which a communication has been examined by the Committee, its author and the government concerned by it are informed of the Committee's decisions, which are not subject to appeal. However, the Committee may agree to re-examine a communication if it receives additional information or new facts.

Role of the Director-General

13. In 104 EX/Decision 3.3, the Executive Board recalled and confirmed the role that the Director-General has always played with regard to the promotion of human rights. In accordance with well-established practice, in the context of the right of intercession, which was recognized by the General Conference, in particular in 19 C/Resolution 12.1, the Director-General has had occasion personally to make various humanitarian representations on behalf of persons, alleged victims of human rights violations in UNESCO's fields of competence, whose cases demanded urgent examination. It must be underscored that paragraphs 8 and 9 of 104 EX/Decision 3.3 recognize the role that the Director-General plays in this regard.

For more information on the Committee on Conventions and Recommendations and the procedure under 104 EX/Decision 3.3:

www.unesco.org/en/la/cr

ANNEX

104 EX/DECISION 3.3 OF THE EXECUTIVE BOARD OF UNESCO

Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective: Report of the Working Party of the Executive Board (104 EX/3)

The Executive Board,

1. Mindful that the competence and role of UNESCO in the field of human rights derive primarily from Article I.1 of the Constitution of UNESCO, which states: "The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations", and from the Charter of the United Nations,
2. Recalling the Universal Declaration of Human Rights, the international covenants on human rights and the various conventions and recommendations adopted by UNESCO,
3. Recalling 19 C/Resolution 6.113 concerning UNESCO's responsibilities in the field of human rights,
4. Recalling also 19 C/Resolution 12.1: "UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism – long-term programme of measures whereby UNESCO can contribute to the strengthening of peace"; and in particular paragraph 10 of the resolution, which invites the Executive Board and the Director-General:
 - "(a) to examine with particular attention the general situation with regard to respect for human rights throughout the world in UNESCO's fields of competence,
 - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective,
 - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close cooperation and coordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learned from them in this field",
5. Having considered the report of a working group of the Board set up by virtue of 102 EX/Decision 5.6.2 to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session of the Board, and additional written comments provided by Members of the Board,
6. Mindful of Article I.3 of the Constitution of UNESCO, which states: "With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States Members of the Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction",

7. Considering that, in matters concerning human rights within its fields of competence, UNESCO, basing its efforts on moral considerations and its specific competence, should act in a spirit of international cooperation, conciliation and mutual understanding, and recalling that UNESCO should not play the role of an international judicial body,
8. Recognizing the important role of the Director-General, in:
 - (a) seeking continually to strengthen the action of UNESCO in the promotion of human rights, both through the settlement of cases and the elimination of massive, systematic or flagrant violations of human rights and fundamental freedoms, and
 - (b) initiating consultations, in conditions of mutual respect, confidence and confidentiality, to help reach solutions to particular problems concerning human rights,
9. Invites the Director-General to pursue this role;
10. Considering that, in the exercise of its competence in the field of human rights, UNESCO is called upon to examine:
 - (a) cases concerning violations of human rights which are individual and specific;
 - (b) questions of massive, systematic or flagrant violations of human rights which result either from a policy contrary to human rights applied de jure or de facto by a State or from an accumulation of individual cases forming a consistent pattern,
11. Considering the terms of reference of the Committee on Conventions and Recommendations in Education,
12. Taking into account the tasks already entrusted to the Committee concerning human rights matters within the Organization's fields of competence,
13. Decides that the Committee will henceforth be designated "the Committee on Conventions and Recommendations";
14. Decides that the Committee will continue to carry out its functions with respect to conventions and recommendations and will consider communications received by the Organization concerning cases and questions of violations of human rights within UNESCO's fields of competence in accordance with the following conditions and procedures:

Conditions

- (a) Communications shall be deemed admissible if they meet the following conditions:
 - (i) the communication must not be anonymous;
 - (ii) the communication must originate from a person or a group of persons who, it can be reasonably presumed, are victims of an alleged violation of any of the human rights referred to in paragraph (iii) below. It may also originate from any person, group of persons or non-governmental organization having reliable knowledge of those violations;
 - (iii) the communication must concern violations of human rights falling within UNESCO's competence in the fields of education, science, culture and information and must not be motivated exclusively by other considerations;
 - (iv) the communication must be compatible with the principles of the Organization, the Charter of the United Nations, the Universal Declaration of Human Rights, the

international covenants on human rights and other international instruments in the field of human rights;

- (v) the communication must not be manifestly ill-founded and must appear to contain relevant evidence;
- (vi) the communication must be neither offensive nor an abuse of the right to submit communications. However, such a communication may be considered if it meets all other criteria or admissibility, after the exclusion of the offensive or abusive parts;
- (vii) the communication must not be based exclusively on information disseminated through the mass media;
- (viii) the communication must be submitted within a reasonable time limit following the facts which constitute its subject matter or within a reasonable time limit after the facts have become known;
- (ix) the communication must indicate whether an attempt has been made to exhaust available domestic remedies with regard to the facts which constitute the subject matter of the communication and the result of such an attempt, if any;
- (x) communications relating to matters already settled by the States concerned in accordance with the human rights principles set forth in the Universal Declaration of Human Rights and the international covenants on human rights shall not be considered;

Procedures

- (b) The Director-General shall:
 - (i) acknowledge receipt of communications and inform the authors thereof of the above-mentioned conditions governing admissibility;
 - (ii) ascertain that the author of the communication has no objection to his communication, after having been communicated to the government concerned, being brought to the notice of the Committee and to his name being divulged;
 - (iii) upon receipt of an affirmative answer from the author of the communication, transmit the communication to the government concerned, informing it that the communication will be brought to the notice of the Committee, together with any reply the government may wish to make;
 - (iv) transmit the communication to the Committee, together with the reply, if any, of the government concerned and additional relevant information from the author, taking into account the need to proceed without undue delay;
- (c) the Committee shall examine in private session the communications transmitted to it by the Director-General;
- (d) the Committee shall decide on the admissibility of communications in accordance with the above-mentioned conditions;
- (e) representatives of the governments concerned may attend meetings of the Committee in order to provide additional information or to answer questions from members of the Committee on either admissibility or the merits of the communication;

- (f) the Committee may avail itself of the relevant information at the disposal of the Director-General;
 - (g) in consideration of a communication, the Committee may, in exceptional circumstances, request the Executive Board to authorize it under Rule 29¹ of the Rules of Procedure to take appropriate action;
 - (h) the Committee may keep a communication submitted to it on its agenda while seeking additional information it may consider necessary for the disposition of the matter;
 - (i) the Director-General shall notify the author of the communication and the government concerned of the Committee's decision on the admissibility of the communication;
 - (j) the Committee shall dismiss any communication which, having been found admissible, does not, upon examination of the merits, appear to warrant further action. The author of the communication and the government concerned shall be notified accordingly;
 - (k) communications which warrant further consideration shall be acted upon by the Committee with a view to helping to bring about a friendly solution designed to advance the promotion of the human rights falling within UNESCO's fields of competence;
15. Decides further that the Committee shall submit confidential reports to the Executive Board at each session on the carrying out of its mandate under the present decision. These reports shall contain appropriate information arising from its examination of the communications which the Committee considers it useful to bring to the notice of the Executive Board. The reports shall also contain recommendations which the Committee may wish to make either generally or regarding the disposition of a communication under consideration;
16. Decides to consider confidential reports of the Committee in private session and to take further action as necessary in accordance with Rule 28² of the Rules of Procedure;
17. Decides also that communications transmitted to it by the Committee which testify to the existence of a question shall be dealt with in accordance with paragraph 18 below;
18. Considers that questions of massive, systematic or flagrant violations of human rights and fundamental freedoms – including, for example, those perpetrated as a result of policies of aggression, interference in the internal affairs of States, occupation of foreign territory and implementation of a policy of colonialism, genocide, apartheid, racialism, or national and social oppression – falling within UNESCO's fields of competence should be considered by the Executive Board and the General Conference in public meetings;
19. Decides to consider at its 105th session the report to be made by the Executive Board and the Director-General to the General Conference, at its twentieth session, on the implementation of Part II of 19 C/Resolution 12.1.

¹ Has now become Rule 30.

² Has now become Rule 29.