

PROCEDURE

Jurisdiction

Advisory opinions

The Court has the discretion on whether or not to provide an advisory opinion pursuant to article 4(1) of the Protocol (*Request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child*, 002/2013, advisory opinion, 5 December 2014, para 40).

The subject matter of the advisory opinion should not be an issue which is already being examined by the African Commission (*Request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child*, 002/2013, advisory opinion, 5 December 2014, para 34).

The advisory opinion must be about legal matters and set out clearly the question which the court is requested to answer and the specific provisions of the Charter or other human rights instruments in respect of which the opinion is sought (*Request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child*, 002/2013, advisory opinion, 5 December 2014, para 35).

Jurisdiction *ratione temporis* and jurisdiction *ratione loci* do not arise in a request for advisory opinion which does not involve the determination of facts (*Request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child*, 002/2013, advisory opinion, 5 December 2014, para 39).

The African Committee of Experts on the Rights and Welfare of the Child is an organ of the AU and therefore has standing to request an advisory opinion from the Court in terms of article 4(1) of the Protocol (*Request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child*, 002/2013, advisory opinion, 5 December 2014, para 57).

To determine whether the Court has personal jurisdiction, the Court must satisfy itself that the applicant falls within the entities allowed to make a request for advisory opinions by virtue of article 4 of the Court's Protocol (*Request for advisory opinion by the Socio-Economic Rights Accountability Project (SERAP)*, 001/2013, advisory opinion, 26 May 2017, para 38).

The use of the term 'Organisation' and 'African Organisation' in article 4 of the Court's Protocol covers both inter-governmental and non-governmental organisations as the drafters would have specified if they meant to cover only inter-governmental organisations in the manner specified in article 5 of the Court's Protocol relating contentious cases (*Request for advisory opinion by the Socio-Economic Rights Accountability Project (SERAP)*, 001/2013, advisory opinion, 26 May 2017, paras 46 & 47). In this regard, an NGO is an African organisation if it is registered in an

African state and has structures at the at the sub-regional, regional or continental level, or undertakes activities beyond the territory of the state within which it is registered as well as organisations in the diaspora recognised by the African Union (*Request for advisory opinion by the Socio-Economic Rights Accountability Project (SERAP)*, 001/2013, advisory opinion, 26 May 2017, para 48). However, recognition of an NGO by the African Commission through the grant of observer status does not suffice as an organisation recognised by the African Union for the purposes of giving standing to an NGO to make a request for advisory opinion in terms of article 4 of the Court's Protocol. If the drafters of the Protocol had intended this to be the case they would have expressly specified that these include NGOs with observer status before the African Commission as they do in article 5 of the Court's Protocol with regards to standing in contentious cases (*Request for advisory opinion by the Socio-Economic Rights Accountability Project (SERAP)*, 001/2013, advisory opinion, 26 May 2017, paras 53 & 54). Consequently, only NGOs with a memorandum of understanding with the African Union or recognised by the African Union itself and not its organs such as the African Commission, have standing to bring requests for advisory opinion given that that African Union has its own procedures of recognition of NGOs through observer status granted by the Executive Council of the African Union (*Request for advisory opinion by the Socio-Economic Rights Accountability Project (SERAP)*, 001/2013, advisory opinion, 26 May 2017, paras 55, 59, 60, 61 & 62)