

# Practice Directives

## PREAMBLE

**Recalling** the adoption of the Rules of Procedure of the African Commission on Human and Peoples' Rights (Rules of Procedure (2020)) at the 27th Extra-Ordinary Session, held in Banjul (The Gambia) from 19 February to 4 March 2020, and which entered into force on 2 June 2020 pursuant to Rule 145;

**Recognizing** the importance of interpreting and supplementing the Rules of Procedure (2020) to further enhance the capacity of the African Commission on Human and Peoples' Rights (the Commission) to fulfil its protection mandate under Article 45 (2) of the African Charter on Human and Peoples' Rights (the Charter);

**Mindful** of deliberations during the 29th Extra-Ordinary Session, done virtually on 2, 3 and 5 October 2020;

**Cognizant** of the need to keep Parties and the general public abreast of any developments that affect the consideration and processing of Communications and to facilitate implementation of the Rules of Procedure (2020);

**Now therefore,**

Pursuant to Rule 140 of Rules of Procedure (2020), the Commission adopts the following Practice Directives on the temporal scope of the Rules of Procedure (2020) and on the Administrative Seizure and standardised presentation of Complaints.

### **Practice Directive I: Temporal Scope of the Rules of Procedure (2020)**

1. This Directive is impelled, to resolve complexities that could be occasioned by the parallel application of the 2010 and 2020 Rules of Procedure, evade any prejudice to the Parties and facilitate the smooth transition of its new Rules of procedure.
2. Rule 141(1) read with Rule 145 of the Rules of Procedure (2020) provides that the Rules take effect upon their entry into force, the latter of which occurs ninety (90) days after their adoption. The 2020 Rules were adopted at the 27th Extra-Ordinary Session of the African Commission held from 19 February to 4 March 2020. Accordingly, the Rules came into effect on 2 June 2020, ninety (90) days after their adoption.
3. Notwithstanding their entry into force, Rule 141(2) of the Rules of Procedure (2020) provides that any recourse exercised against a decision or other measure taken pursuant to the previous (2010) Rules shall be determined according to the applicable provisions of those Rules. Additionally, Rule 142 provides that the Rules of Procedure (2020) shall have no retroactive effect.
4. When read together, the above Rules enshrine the principle of non-retroactivity captured in the maxim *lex prospicit, non respicit* (the law looks forward and not backward) which is further codified in Article 7(2) of the African Charter. This principle prohibits the application of a new Rule to acts or facts initiated before the rule took effect. The underlying motive for this principle is the need for legal certainty which aims at ensuring fairness in the application of the law by not prejudicing parties who acted according to a procedure or law applicable at the time of the act.
5. In view of the foregoing, the Commission decides the following:
  - (i) All Complaints and Communications received on or after the entry into force of the new Rules of Procedure (2020) shall continue to be processed, in their entirety and until finalisation, in accordance with these new Rules; and
  - (ii) All Complaints and Communications received at the Commission prior to the entry into force of the Rules of Procedure (2020) shall continue to be processed, in their entirety and until finalisation, in accordance with the relevant provisions of the Rules of Procedure (2010).

### **Practice Directive II: Administrative Seizure of Complaints**

1. Rule 115 (5) of the Rules of Procedure (2020) provides that the Secretary shall consider and seize Communications on behalf of the Commission. Whereas in the previous Rules of Procedure (2010) the authority to seize Complaints was within the exclusive purview of the Commission, the Secretariat through the Secretary is now primarily responsible for the consideration and seizure of Complaints on behalf of the Commission. It is expected that the institution of this procedure will increase the efficiency and enhance the overall capacity of the Commission to deliver on its protection mandate.

2. To this end, Rule 115 (8) of the Rules of Procedure (2020) provides that the Secretariat is required to communicate its decision on seizure to parties within sixty (60) days of receipt of Complaints submitted under Article 55 of the Charter (Other Communications). Where the Complaint is missing the necessary elements as stipulated in Rule 115 (2), a request for further information is to be transmitted as per Rule 115 (4), in which case the time prescribed in Rule 115 (8) shall begin to run from the time the necessary information is furnished in accordance with Rule 115 (6) of the Rules of Procedure (2020). While Rule 115 of the Rules of Procedure (2020) stipulates a turnaround time within which the Secretariat may request necessary information, the Rules do not prescribe a similar provision for Complaints received under Articles 48 and 49 of the Charter (Inter-State Communications).

3. Also, while Rule 115 (10) of the Rules of Procedure (2020) requires the Commission to decide by absolute majority whether to be seized of a Complaint, where seizure was declined during the intersession period, the Rules remain silent as to the finalisation of Inter-State Complaints not seized intersession.

4. In view of the foregoing, the Commission decides the following:

(i) The sixty (60) days turnaround time prescribed under Rule 115 (8) shall apply mutatis mutandis to Communications received under Article 48 and Article 49 of the Charter.

(ii) The absolute majority standard prescribed under Rule 115 (10) shall apply mutatis mutandis to Communications received under Article 48 and Article 49 of the Charter.

### **Practice Directive III: Online/Standardized Complaints Form**

5. The Commission wishes to discourage the practice of Complainants depositing lengthy and convoluted submissions for the Commission's consideration on seizure. Parties are therefore strongly urged to keep written submission as concise as possible, and in a manner compatible with the requirements for seizure as stipulated under Rules 109 (2) and 115 (2) of the Rules of Procedure (2020).

6. In view of the foregoing, the Commission decides the following:

(i) All Complainants must use the Complaint Form provided for on the web page of the Commission (available at <https://t.co/K6uvGhu2ZZ?amp=1>) in order to submit Complaints. The contents of the Complaint Form must not exceed thirty-five (35) pages, excluding appendixes. The Secretariat may request the resubmission of Complaints that exceed the prescribed thirty-five (35) page limit.

(ii) If the Complaint Form is submitted electronically, a paper version of the Complaint Form and its appendixes should not be sent to the Commission by post.

(iii) Annexes to the Complaint Form, listed in the schedule of annexes, which by their nature cannot be submitted electronically should be sent separately to the Commission by post.