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## PRACTICE DIRECTIONS

**5 MARCH 2024**



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## PREAMBLE

1. In accordance with Rule 28 of the Rules of Court (the Rules), the African Court on Human and Peoples' Rights (the Court) hereby adopts these Practice Directions as a guide to Parties, to replace the Practice Directions to Guide Potential Litigants (adopted at the Fifth Extraordinary Session of the Court (5-12 October 2012) and the Practice Directions for Virtual Sessions in the African Court on Human and Peoples' Rights (adopted on 2 June 2020).
2. The Annexure(s) hereto shall be taken, read, and construed as part of these Practice Directions, and the provisions thereof shall have the same force and effect as if expressly set out in the body of these Practice Directions. The Practice Directions may be amended or supplemented as and when necessary, to meet the requirements of the Court.

### I. GENERAL MATTERS

3. The Registry shall be open to the public during the following hours (East African Time), Monday to Friday, except public holidays:  
  
Morning : 8.00 a.m. to 1.00 p.m.  
Afternoon : 2.00 p.m. to 5.00 p.m.
4. The Ordinary Sessions of the Court are held in March, June, September, and November; or at any other period as the Court may deem fit. The Court may also hold Extraordinary Sessions.
5. The Court Sessions shall be convened physically or, exceptionally, due to *force majeure*, virtually. The decisions taken during virtual sessions shall be deemed to have been taken at the seat of the Court and shall have the same effect as if the Court were meeting at a physical session.

## II. FILING OF PLEADINGS AND SERVICE OF PROCESS

6. Pleadings shall be commenced, as much as possible, by filing, the applicable forms accessed from the website under the following link <https://www.african-court.org/wpafc/forms-for-parties-2/> or by using any other means deemed acceptable by the Court.
7. The Court shall not charge any fees for filing or processing an Application.
8. Where a Party appoints a representative, they shall provide a document attesting to such designation.
9. All processes submitted to the Court shall be signed by the Parties or their duly mandated representatives. Parties and their representatives shall also submit their respective email addresses and if possible, compliant telephone numbers registered on social messaging platforms (WhatsApp, Telegram, Viber, etc) to facilitate follow up by the Registry, where necessary.
10. Pleadings may be filed by electronic mail, registered post, delivered by hand, or submitted through the electronic case management system of the Court.
11. Once an application is allocated a registration number by the Registry, all subsequent pleadings shall bear this number.
12. Where Parties file pleadings by email, they shall submit them using the address: [registry@african-court.org](mailto:registry@african-court.org), and as far as possible, in both PDF and Word formats.
13. The Registry of the Court shall acknowledge receipt of the pleadings filed and serve process, where possible, both electronically and physically, using the Parties' and their designated representatives' respective email and physical addresses.

### **III. TIME LIMITS**

#### **A. General**

14. Each Party must file pleadings and any accompanying documents or evidence at the Registry of the Court, within the time limit set by the Court, in accordance with the Rules.

#### **B. Extension of time-limits**

15. A time limit set by the Court may be extended on request by a Party.
16. A Party seeking an extension of time must do so, in any case, before the expiry of the time limit set by the Court. The request should state the reason for the extension.
17. A request for extension of time shall be communicated to the other Party/Parties to the case, giving them fifteen (15) days to submit their observations, if any.
18. The decision to extend time is at the discretion of the Court.
19. Pleadings that are filed out of time will not be considered unless the Court decides otherwise, in the interest of justice.

### **IV. REQUEST FOR PROVISIONAL MEASURES**

20. The Court may issue provisional measures in accordance with Article 27(2) of the Protocol and Rule 59 of the Rules.
21. Any party seeking provisional measures must apply to the Court. A request for provisional measures can be filed together with the main application or at any stage of the proceedings before the judgment. In any case, the

request for provisional measures shall bear the registration number of the main application.

22. The request for provisional measures shall state the relief(s) or measure(s) sought, the reasons thereof, specifying in detail, the extreme gravity and urgency of the situation, and the irreparable harm likely to be caused.
23. The request shall be accompanied by all relevant supporting documents and other materials which could substantiate the applicant's allegations.
24. The Court will reject requests for provisional measures that are incomplete or have insufficient information.

#### **V. REQUEST AND INVITATION TO ACT AS *AMICUS CURIAE***

25. An individual or organisation that wishes to act as *amicus curiae* shall submit a request to the Court, specifying the contribution they intend to make regarding the pending application.
26. The Court may, on its own motion, invite an individual or institution to act as *amicus curiae*.
27. The Court will, within a reasonable time, determine whether to grant the request.
28. If the Court grants the request to act as *amicus curiae* or designates one, the Registrar shall notify the individual or institution and serve them with the Application and any other relevant pleadings relating to the Application. The *amicus curiae* shall also be informed by the Registrar of the time set by the Court for the filing of the *amicus curiae* brief.
29. The *amicus curiae* briefs and annexes, if any, shall be transmitted to the Parties, for their information.

## **VI. FIXING THE DATE FOR PUBLIC HEARING**

30. Where the Court decides to hold a public hearing in a matter, the Court shall fix the date and time for the public hearing having regard to Parties' and other relevant participants' (such as witnesses, experts, and *amici curiae*) locations and time zones.
31. The Registrar shall inform the Parties of the date for the public hearing.
32. Upon receipt of notification of the date of the hearing, a Party which seeks postponement or adjournment thereof shall file a request within fifteen (15) days of receipt.
33. The Registry shall notify the other Party of the request.
34. The Court shall decide on the request and notify the Parties of its decision.

## **VII. PREPARATION AND CONDUCT OF PHYSICAL PUBLIC HEARINGS**

35. Thirty (30) days prior to a physical public hearing, each Party shall submit the following to the Court:
  - a. Name of representative(s), if different from the representatives already designated or in addition to those already designated;
  - b. Contact details for the representative(s), particularly email addresses, and compliant telephone numbers registered on social messaging platforms (WhatsApp, Telegram, Viber etc);
  - c. The list of witnesses to be called, if any, and the subject of their testimony; and
  - d. The language the representative(s) will use for their submissions and the language the witness(es) will use for their testimony.

36. The withdrawal of a Party's representative and the appointment of a new representative shall be communicated to the Registrar in writing at least fifteen (15) days before the public hearing.
37. At least, ten (10) days before the public hearing, the Registry shall send to the Parties and their representatives and to other participants, the programme for the hearing, indicating *inter alia*, how much time each Party and other participants shall be allocated for their submissions.
38. The Registry shall also send the Parties and their representatives, the link or access information to the electronic case management platform to obtain all pleadings and submissions filed in the case in a digitised format. However, if the Parties or their representatives are unable to access the relevant documents in a digital format, the Registry will send them physically.
39. Prior to the commencement of the hearing, the Presiding Judge shall meet the Parties' representatives in a pre-hearing meeting to address any issues relating to the hearing.
40. Parties, their representatives and other participants should abide by the Court decorum and etiquette and be appropriately dressed. Where the Parties' representatives are legal professionals, they should be properly robed.
41. A Judge shall be referred to as 'Honourable Justice' or 'Honourable Lady Justice', as applicable, and the Bench shall be referred to as 'the Court'.
42. All communications from any representative to the Court shall be channelled through the Registrar.
43. The Presiding Judge shall maintain order and discipline. No one shall speak unless allowed to do so by the Presiding Judge.



44. When making submissions, participants must be precise and conscious of their speed to facilitate interpretation and verbatim recording.
45. When witnesses and experts are to be heard, the Registry shall make appropriate arrangements such that they can only join the hearing when called upon. When the applicant is also a witness, he or she is entitled to join the proceedings at the commencement of the public hearing.
46. The Registrar shall record the hearing in verbatim and electronic formats and will be solely responsible for producing the verbatim record of the hearing and its transmission to the Parties and their representatives in accordance with Rule 58 of the Rules.
47. To conserve the public nature of hearings, all hearings shall be live streamed unless decided otherwise by the Court.

#### **VIII. PREPARATION AND CONDUCT OF VIRTUAL PUBLIC HEARINGS**

48. All provisions on the planning and conduct of physical public hearings shall apply *mutatis mutandis* to virtual public hearings.
49. The Registry shall also send the Parties the credentials for the videoconferencing or information technology platform to be used during the hearing.
50. The Information and Technology (IT) Unit of the Court shall plan and run a pre-test of the system for the virtual public hearing at least once before the public hearing involving the participants. The pre-test is to ensure that the communication systems used by all participants and interpretation and verbatim recording services work effectively.
51. On the day of the public hearing, the Parties and their representatives and other participants shall connect to the system at least one (1) hour before the commencement of the hearing. The IT Unit shall run a final test to ensure

that all features work properly and to authenticate the participants. The IT Unit shall be on standby throughout the hearing to address any technological problems that may arise.

52. Parties and other participants to the hearing shall ensure that they have access to stable and reliable internet connection for uninterrupted participation in the proceedings.
53. Only the spoken word will be captured in the verbatim record, excluding material sent through the 'chat-box' for video conferencing technology applications.

#### **IX. DELIVERY AND NOTIFICATION OF DECISIONS**

54. In accordance with Rule 74 of the Rules, delivery of decisions of the Court shall be in a physical public sitting, or exceptionally, due to *force majeure*, in a virtual public sitting, due notice having been given to the Parties and other participants to the case.
55. Delivery of decisions either in a physical or virtual public sitting shall be carried out as follows:
  - a. The decisions will, as far as possible, be delivered by the Bench for each case and where this is not possible, by the Judges available, or by the President.
  - b. Parties and their representatives and other participants shall observe the same courtesies and decorum as in the public hearings.
  - c. The delivery of the decisions shall be live streamed.
  - d. The decisions delivered shall be signed.
  - e. Dissenting, Separate Opinions and Declarations shall be signed.
  - f. The Registrar shall notify the Parties of the decision and Opinions and Declarations, as applicable.

## **X. GENERAL PROVISION**

56. In the interest of proper administration of justice, the Court shall not accept, as representative of a party to an application, an individual who had within the last three (3) years been a Judge, Registrar, Deputy Registrar or Legal Officer of the Court.

## **XI. SCOPE OF APPLICATION AND AMENDMENT**

57. These Practice Directions shall apply in conformity with the Rules. Upon adoption, it shall replace the Practice Directions to Guide Potential Litigants (adopted at the Fifth Extraordinary Session of the Court, 5-12 October 2012) and the Practice Directions for Virtual Sessions in the African Court on Human and Peoples' Rights (adopted on 2 June 2020).

58. The Practice Directions may be amended or supplemented as and when necessary, to meet the requirements of the Court.

## **XII. ENTRY INTO FORCE**

59. These Practice Directions entered into force upon adoption by the Court on the Fifth Day of March in the Year Two Thousand and Twenty-Four, during the Seventy Second Ordinary Session of the Court, held at Arusha, United Republic of Tanzania.

## **XIII. AUTHORITATIVE LANGUAGES**

60. These Practice Directions are written in the Court's working languages all versions thereof being equally authoritative.

## **ANNEXURE ON EVIDENTIARY MATTERS**

### **I. OBJECTIVES OF THE ANNEXURE**

1. The objectives of this annexure on evidence before the Court are:
  - a. To provide information and clarity to the Parties about evidence rules and practices applicable in proceedings before the Court.
  - b. To provide guidance to the Parties in situations where required evidence is unavailable for valid reasons.
  - c. To collate existing evidentiary guidelines and practices applied by the Court.

### **II. GENERAL PROVISIONS ON EVIDENCE**

2. Pursuant to Article 26(2) of the Protocol, decisions of the Court will be made based on evidence, sources of which may include:
  - a. Evidence adduced by the Parties, and their witnesses, experts or any other person whose submissions, assertions or statements are likely to assist the Court.
  - b. Any evidence obtained by the Court that clarifies facts of a case including from enquiries or visits to the scene of incident, requests for opinions and reports from individuals and institutions and testimony on oath, pursuant to Rule 55 of the Rules.
  - c. Fact-finding by the African Commission on Human and Peoples' Rights on behalf of the Court in cases where the Commission is not a party, in accordance with Rule 36(4) of the Rules.
3. The Court will be guided by the principles of equity, fairness, and reasonableness in the process of allowing and considering evidence.

### **III. BURDEN OF PROOF**

4. In general, the burden to prove the merits of a case and justify claims thereof lies with the Applicant.
5. The burden of proof may shift to the Respondent State in certain circumstances, *inter alia*, where the Respondent State has more or exclusive access to relevant information about a fact in issue.

### **IV. STANDARD OF PROOF**

6. The applicable standard of proof in all proceedings at the Court is the balance of probabilities.
7. The Court shall consider the circumstances of each case to determine whether a fact has been established or proven.

### **V. PRESUMPTIONS, INFERENCES AND JUDICIAL NOTICE**

8. In appropriate circumstances, the Court may make use of presumptions and inferences.
9. Where a Party fails to challenge evidence, fails to adduce evidence or provide information requested by the Court, fails to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.
10. The Court shall take judicial notice of facts which are of common knowledge.

## **VI. INABILITY TO ADDUCE EVIDENCE**

11. If a Party is unable to provide documentary evidence required to prove a fact in issue, such Party may provide an explanation why such document cannot be provided, and oral evidence may be used instead.
12. The Court may, in exercise of its discretion and in appropriate circumstances, take into consideration the difficulties experienced by a Party in obtaining evidence in support of their claims.
13. The Court may, at the request of a Party or on its own motion, waive the requirement to adduce evidence for any of the following reasons:
  - a. If there is an unreasonable burden to produce the required evidence.
  - b. If there is loss or destruction of documentary evidence that has been shown with reasonable likelihood to have occurred.
  - c. Considerations of procedural efficiency, proportionality, fairness, or equality of the Parties that the Court determines to be compelling.

## **VII. EXAMPLES OF EVIDENCE FOR VARIOUS CLAIMS**

14. Examples of evidence that a Party may rely on include, but are not limited to: certified copies of judgments, rulings, orders, correspondence and any other written evidence related to the application, government records and reports, domestic laws and other relevant statutory material, photographs, videos, transcripts, witness statements and testimony, charge sheets, medical reports, newspaper articles, NGO reports, expert reports and opinions and certified copies of any record of a decision of a public authority that is being challenged.
15. For any claim of alleged material loss, an Applicant is required to adduce specific evidence in support of the precise loss that he or she has suffered due to the alleged violation.

16. Examples of evidence that may be relied on to prove the identity of the victim include but are not limited to, certified copies of: passports, national identity cards, driver's licences, birth certificates, baptismal certificates, electoral cards, voter's cards, refugee cards, consular identity cards and certificates of loss of identification.
17. Documents that the Court may consider as proof of familial relationship to the victim include, but are not limited to, certified copies of: marriage certificates, death certificates, attestation of paternity or maternity, decisions of a national court recognising a family relationship, documents pertaining to medical treatment, family registration booklets and genetic evidence.
18. In reparation claims related to business, examples of evidence that may be relied on to prove existence of a business include but are not limited to: certified copies of: business licences, certificates of business registration, payment receipts or business contracts while examples of forms of evidence that may be relied on to prove income from the business include certified copies of bank statements and of tax records or tax compliance certificates.
19. For purposes of proving loss of land or property where there is no official proof of title, the Court may accept relevant evidence, including but not limited to: proof of prior possession or ownership of the land or property, sale agreements, certified copies of residency certificates or habitation certificates and expert testimony in so far as these are provided for under the domestic legal regime.
20. To prove loss of income and loss of future earnings, evidence of the actual income of the victim should be provided. Where such evidence is unavailable, relevant information can be provided, including, but not limited to, the alleged victim's educational records and professional qualifications to prove the salary they likely would have earned, the average wage for the victim's profession, expert estimations of the annual amount of income in the profession per year, and minimum wage or per capita income in the Respondent State.

## VIII. AFFIDAVIT EVIDENCE

21. The following formal requirements should be met by a Party seeking to rely on an affidavit as evidence:
  - a. The depositions in the affidavit must be witnessed by a person authorised to witness such a declaration in accordance with the law and procedure of the applicable State.
  - b. That the deponent states that the contents of the affidavit are, to the best of his or her knowledge and belief, true and correct.
  - c. The content is relevant and relates to the case being considered.
  - d. Indicate the date and place of the declaration.
  - e. Be signed or marked by the deponent.
  
22. The Court may consider evidence by way of an affidavit that is not supported or corroborated by other forms of evidence, provided that the Party relying on such affidavit justifies the absence or demonstrates inaccessibility of other forms of supporting or corroborating evidence.
  
23. The other Party or Parties are entitled to file counter affidavits.
  
24. The probative value or weight to be attached to affidavit evidence by the Court will depend on the circumstances of each case. Factors to be considered by the Court include but are not limited to:
  - a. Whether or not the deponent is an interested or disinterested Party to the outcomes of the case.
  - b. Whether the content of the affidavit has been disputed by the opposing Party.
  - c. The reliability or probity or relevance of the contents of the affidavit including whether what is attested to is within personal knowledge of the deponent.
  - d. The closeness in time between the period when the relevant facts occurred and drawing of the affidavit.



- e. Whether the content of the affidavit is a restatement of the Party's submissions.

## **IX. INHERENT POWERS OF THE COURT ON EVIDENCE**

- 25. In appropriate circumstances and subject to its discretion, the Court may at the request of a Party or on its own motion, order the re-opening of pleadings for purposes of receiving additional evidence.
- 26. The Court retains the inherent powers to adopt such procedures or decisions regarding the receipt and assessment of evidence as may be necessary.

